Supreme Court of the United States

OCTOBER TERM, 1917.

No. .

EMMA GOLDMAN AND ALEXANDER BERKMAN,
PLAINTIFFS-IN-ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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Writ of Error and Order Allowing Same.

UNITED STATES OF AMERICA, ss.:

The President of the United States, To the Honorable the Judges of the District Court of the United States for the Southern District of New York, Greeting:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, or some of you, between The United States of America, Plaintiff, and Alexander Berkman and Emma Goldman, Defendants, a manifest error hath happened, to the great damage of the said defendants as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the United States, the 19th day of July, in the year of our Lord one thousand nine hundred and seventeen.

JAMES D. MAHER,
(Seal) Clerk of the Supreme Court
of the United States

Allowed by

LOUIS D. BRANDEIS,
Associate Justice of the Supreme Court of the United States.

Indictment.

DISTRICT COURT OF THE UNITED STATES OF AMERICA,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

At a Stated Term of the District Court of the United States of America for the Southern District of New York, begun and held in the City and County of New York, within and for the District aforesaid, on the first Tuesday of June in the year of our Lord one thousand nine hundred and seventeen, and continued by adjournment to and including the 21st day of June in the year of our Lord one thousand nine hundred and seventeen.

SOUTHERN DISTRICT OF NEW YORK, ss.:

THE GRAND JURORS OF THE UNITED STATES OF AMERICA, within and for the District aforesaid, on their oath present that on the eighteenth day of May in the year of our Lord one thousand nine hundred and seventeen, the President of the United States of America duly issued his Proclamation as provided by the Act of Congress approved May 18, 1917, entitled, "An Act to authorize the President to increase temporarily the Military Establishment of the United States," in which said Proclamation the President of the United States duly proclaimed and gave notice to all persons subject to registration in the several States and in the District of Columbia, in accordance with the said Act of Congress approved May 18, 1917, that the time and place of such registration shall be between 7 A. M. and 9

P. M. on the fifth day of June in the year of our Lord one thousand nine hundred and seventeen, at the registration place in the precinct wherein they may have their permanent homes; that those who shall have attained their twenty-first birthday and who shall not have attained their thirty-first birthday on or before the day therein named are required to register, excepting only officers and enlisted men of the regular army, the navy, the Marine Corps, and the National Guard and Naval Militia, while in the service of the United States, and officers in the Officers' Reserve Corps, and enlisted men in the Enlisted Reserve Corps, while in active service:

And the Grand Jurors aforesaid, on their oath aforesaid, do further present that Emma Goldman and Alexander Berkman (hereinafter referred to as the defendants), both late of the City and County of New York, in the District aforesaid, heretofore, to wit, on the eighteenth day of May in the year of our Lord one thousand nine hundred and seventeen, and on each and every day thereafter up to and including the date of the filing of this indictment, at the Southern District of New York and within the jurisdiction of this Court, unlawfully, wilfully, knowingly and feloniously did conspire together and agree between themselves, and with divers other persons whose names are to the Grand Jurors unknown, to commit an offense against the United States, that is to say: The said defendants unlawfully, wilfully, knowingly and feloniously did conspire together and agree between themselves, and with the said divers persons whose names are to the Grand Jurors unknown, that divers persons whose names are to the Grand Jurors unknown, the same being male persons between the ages of twenty-one and thirty, both inclusive, being subject to registration in accordance with regulations to be prescribed by the President, and upon proclamation by the President and other public notice given by him and by his direction stating the time and

place of such registration, being under the duty as persons of the designated ages, except officers and enlisted men of the Regular Army, the Navy, and the National Guard and Naval Militia while in the service of the United States, to present themselves for and submit to registration under the provisions of the Act of Congress, approved May 18, 1917, entitled, "An Act to authorize the President to increase temporarily the Military Establishment of the United States," should unlawfully and wilfully fail and refuse to present themselves for registration and to submit thereto, as provided by the aforementioned Act of Congress, approved May 18, 1917;

And the Grand Jurors aforesaid, on their oath aforesaid, do further present that the said defendants, Emma Goldman and Alexander Berkman, unlawfully, wilfully, knowingly and feloniously did conspire together and agree between themselves, and with the said divers persons whose names are to the Grand Jurors unknown, to aid, abet, counsel, command, induce and procure divers persons whose names are to the Grand Jurors unknown, the same being male persons between the ages of twenty-one and thirty, both inclusive, being subject to registration in accordance with regulations to be prescribed by the President, and upon proclamation by the President and other public notice given by him and by his direction stating the time and place of such registration, being under the duty as persons of the designated ages, except officers and enlisted men of the Regular Army, the Navy, and the National Guard and Naval Militia while in the service of the United States, to present themselves for and submit to registration under the provisions of the Act of Congress approved May 18, 1917, entitled, "An Act to authorize the President to increase temporarily the Military Establishment of the United States," unlawfully

and wilfully to fail and refuse to present themselves for registration and to submit thereto, as provided by the aforementioned Act of Congress approved May 18, 1917;

And to effect the object of the said conspiracy, the defendant Emma Goldman, on the eighteenth day of May in the year of our Lord one thousand nine hundred and seventeen, did deliver an address beginning with the words, "We don't believe in conscription!" and ending with the words "we can support the point of real freedom and liberty and brotherhood," at a public meeting held in the Harlem River Park and Casino, situate at Second Avenue, 126th to 127th Streets, in the City and County of New York, in the Southern District of New York;

And further to effect the object of the said conspiracy, the defendant Alexander Berkman, on the first day of June in the year of our Lord one thousand nine hundred and seventeen, did publish and cause to be published, in the City and County of New York, in the Southern District of New York, a periodical and publication entitled "*The Blast,* Vol. II. New York, June 1, 1917. No. 5";

And further to effect the object of the said conspiracy, the defendant Emma Goldman, on the second day of June in the year of our Lord one thousand nine hundred and seventeen, did give to one James A. Hagerty, at the office of the No-Conscription League, situate at 20 East 125th St., in the City and County of New York, in the Southern District of New York, a copy of a periodical and publication entitled "*Mother Earth,* Vol. XII. June, 1917. No. 4";

And further to effect the object of the said conspiracy, the defendant Alexander Berkman, on the fourth day of June in the year of our Lord one thousand nine hundred and seventeen, did deliver an address beginning with the words "Comrades, friends and enemies," and ending with the words

"You know that after all, the cause of the soldiers and the workers is the common cause," at a public meeting held at the Hunts Point Palace, situate at 953 Southern Boulevard, in the City of New York and County of Bronx, in the Southern District of New York;

And further to effect the object of the said conspiracy, the defendant Emma Goldman, on the fourth day of June in the year of our Lord one thousand nine hundred and seventeen, did deliver an address beginning with the words "Men, don't you know that the soldiers came here to disturb the meeting?" and ending with the words "and you will all raise one mighty voice just going to drown militarism," at a public meeting held at the Hunts Point Palace, situate at 953 Southern Boulevard, in the City of New York and County of Bronx, in the Southern District of New York;

Against the peace of the United States and their dignity, and contrary to the form of the statute of the United States in such case made and provided. (§§37 and 332 U. S. C. C., and §5 of the Act of May 18, 1917.)

FRANCIS G. CAFFEY,
United States Attorney.

(Endorsed:) U. S. District Court, United States of America vs. Emma Goldman and Alexander Berkman. Indictment—Conspiracy to induce persons not to register, Secs. 37 and 332 U. S. C. C., and Sec. 5 of the Act of May 18, 1917, Francis G. Caffey, U. S. Attorney. A true bill, Geo. N. Taylor, Foreman. June 21, 1917, Defendants plead not guilty. Bail fixed in sum of $25000 each. Wed. next for trial. June 27 to July 9, 1917, Trial. July 9, Trial concluded. Verdict, Defendants guilty as charged. July 9, Emma Goldman sentenced two years and Ten thousand dollars fine and to stand committed, etc., Mo. State Pen., Jefferson City, Mo. July 9, Alexander Berkman sentenced two years and fine Ten thousand dollars

and to stand committed, etc., U. S. Pen., Atlanta, Ga., J. M. MAYER, *J.*

Defendants' Bill of Exceptions.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA,

vs.

EMMA GOLDMAN and ALEXANDER BERKMAN.

This cause came on for trial on June 27th, 1917, before Hon. JULIUS M. MAYER, *J.*, and a jury. Appearances: Francis G. Caffey, Esq., United States Attorney, for the Government; Harold A. Content, Esq., Assistant U. S. Attorney, of counsel. Emma Goldman, one of the defendants, in person. Alexander Berkman, one of the defendants, in person. Thereupon the following proceedings were had:

Mr. Content: Where is Mr. Weinberger?

Mr. Berkman: We will defend ourselves. I move an adjournment on the following grounds: We have had absolutely no chance of familiarizing ourselves with the case, or with the charges against us brought by the prosecution. We have been unable to see witnesses or subpoena witnesses, many of them being out of town. We have been out on bail only a very short time, owing to the fact that it was impossible to secure $25,000 bail for the defendant Emma Goldman; owing further to the fact that the prosecution placed many obstacles in the way of the defendant Alexander Berkman. The defendant Emma Goldman has been out only since Thursday evening late. Every moment of the time

until Monday night was devoted to securing bail for the defendant Alexander Berkman. As a result of this we have been utterly unable to even talk or give a thorough reading to the indictment, to familiarize ourselves with the indictment, and familiarize ourselves with the different phases of the law employed in the indictment. For these reasons we ask for a reasonable adjournment to prepare ourselves for our defense.

Mr. Content: Your Honor will understand that whereas it is always the defendant's right to defend himself or herself, on the other hand up until this moment, Mr. Weinberger was the attorney of record. I asked his clerk a few minutes ago where he was and he said he would be here in a few moments. This is a form of indictment Mr. Weinberger ought to know and knows. He was furnished with a copy of the indictment the day it was filed. He has had ample opportunity to look it over, and it is not any very different form from other indictments in which he has been counsel.

Miss Goldman: May I say something, your Honor?

The Court: Yes.

Miss Goldman: I wish to state it is not true, as stated by Mr. Content, that Mr. Weinberger had the charge of our case. He is not in charge of our case, not because he would not have been willing or glad to appear, but because we decided after due consideration to conduct our own case. Mr. Weinberger, it is true, the clerk said, will appear in court. He may indeed appear in court, but not as the counsel for our defense. We wish to conduct our own case, and we feel we ought to have a reasonable adjournment to prepare our case, both in view of the fact that we do not know the intricacies of the law, and we ought to have time to give it due consideration from every angle. So we are asking your Honor to extend us a reasonable adjournment.

Mr. Berkman: I should like to add to the reasons given by Miss Goldman that I have been out only since Monday, five o'clock in the afternoon. To-day is Wednesday morning. It was absolutely a physical impossibility for me to do anything to become familiar with the indictment, look up witnesses, to give the matter much thought, especially in view of the fact that I was twelve days in jail, and that I was in great pain, had an accident to my foot, had no treatment in the cell, and that I am physically and mentally just now not in a condition to go ahead with the trial because of my accident.

The Court: When this case first came up, I stated that the case would proceed to-day. At that time Mr. Weinberger represented both of the defendants, and apparently has represented them, so far as any information came to the prosecuting attorney, until this very moment. The statute of May 18, 1917, provides that violations thereof shall have precedence on the criminal docket. That is the mandate of Congress, approved by the President of the United States.

Now, while, technically speaking, this indictment of the two defendants here now is not for the violation of that act, the indictment is for a conspiracy to violate that act, and is well within the spirit and the purpose which Congress laid upon the courts of trying violations of that act, or anything which violated the authority directly, without delay, for reasons that Congress regarded as appropriate reasons of public policy.

Now you have concluded to conduct your own case, which is your absolute right; and every effort will be made to give you the fullest opportunity to conduct your own case in accordance with law; but I deem it my duty to deny the motion, and the case will proceed.

Mr. Berkman: May I say something with regard to that act? I am not familiar with it; but I take

it for granted that that act does not intend to deprive us of the opportunity to prepare our case.

The Court: I have ruled, Mr. Berkman. The stenographer will note an exception on behalf of each, which will preserve your rights.

Miss Goldman: May I also say, your Honor, that I take it that it is not the intention of the Court to prosecute us—that as long as we do not, we are not familiar with the details of the indictment, as long as we are not, have not been in a position to even familiarize ourselves with the different phases of law employed in the indictment, have we not the right to ask you to reconsider your denial of the motion, and grant us a reasonable adjournment for the sole purpose of familiarizing ourselves, of studying the phases, and of making an adequate defense? Surely, your Honor, that is a thing which is even granted and was granted in a country like Russia under the Czar. Surely we ought to have the right in the United States.

Mr. Content: Will you permit me to make this suggestion on the record: The defendant Miss Goldman states that Mr. Weinberger was not unwilling to represent them, and that until to-day he did represent them, therefore they have not been deprived of the right of counsel in any regard.

The Court: You have had the fullest opportunity. The proceedings began by the arrest and subsequent arraignment before the Commissioner. You were then arraigned before this Court. You were informed of the nature of the charge against you. You were represented then by counsel. You have had the fullest opportunity, and I can do no more than reiterate my conclusion to deny the motion; and the stenographer is instructed to note that you except to my decision, so that your rights may be preserved.

Miss Goldman: We take exception.

Mr. Berkman: We take an exception. May I call your attention also to the fact that Mr. Wein-

berger never represented me as an attorney in the sense of defending me, because he only represented me as an attorney to help get my bail, and having not been in the jail sufficiently there would be no opportunity to prepare my case.

The Court: I have ruled, Mr. Berkman.

Mr. Berkman: May I put in as evidence, or ask your Honor's attention to a letter from a physician who has been treating me with regard to my injury?

The Court: Yes. The stenographer will note that this letter from Dr. Max Strunsky, 226 West 70th Street, has been presented by the defendant Berkman, and will spread the same on the record. (The letter reads as follows:) "I hereby certify that Alexander Berkman has sustained a severe injury to his leg and it is necessary for him to have proper medical treatment, and he is suffering great pain at the present time because of his said injury. Dr. Max Strunsky."

Miss Goldman: If I may say, since we were denied a reasonable adjournment and since we are not prepared for trial, we refuse to participate in the proceedings.

The Court: Very good. You may be seated, each of you.

Mr. Content: Shall the Clerk call the jury?

The Court: In order to protect the rights of the defendants, let the Clerk note a motion upon their behalf to dismiss the indictments against them. This motion, for their protection, will be understood to be addressed to such constitutional questions, if any, as they may desire to refer at any time; and also addressed to the indictment from the standpoint of whether or not it sets forth a crime.

The Court denies the motion to dismiss, and the record will show an exception reserved to the defendants, to preserve their rights. The Clerk will now call the jury.

(The Clerk then called twelve talesmen and filled the jury box.)

Mr. Content: Do you want to examine the jurors?

Miss Goldman: I don't wish to participate in this farce.

Mr. Content: Then you don't want to examine any jurors?

Miss Goldman: No, I don't.

Mr. Content: Mr. Berkman, do you desire to examine any of the jurors in this proceeding?

Mr. Berkman: I should like to find out first how we are going to be tried, since we are not prepared. I have stated that I got out of jail Monday, five o'clock at night. I only had one day and it was absolutely humanly impossible to get ready. I have not read the indictment yet and I have been in great pain, as the statement of the doctor will testify.

Mr. Content: Your Honor has passed on that.

The Court: I have answered all that. I have ruled that you have had plenty of time.

Mr. Berkman: But I have not had.

The Court: And I have so ruled and you have an exception, and you say you will conduct your case, each of you.

Mr. Berkman: When I get a chance to prepare.

The Court: Very well. Now you are at liberty to examine the jury, each of the defendants. That is the first procedure. You may ask the jury any appropriate questions.

Mr. Berkman: But you have deprived me of the opportunity to prepare myself.

The Court: Now, Mr. Berkman, let me say to you, I will and I desire to protect your rights, but I will not allow any speeches in the court room. I will do everything I can, not observing too closely legal technique, to let you present any matters you desire to present, that have to do with the law or the facts in this case; and I now state to both of the defendants that you can examine the jury. Now

you may examine the jury if you desire to do so.

Miss Goldman: May I not ask, or may we not ask to be instructed what the procedure of the prosecution——

Mr. Content: May I assist Miss Goldman?

The Court: Yes.

Miss Goldman: Just a moment—may we not be instructed, that in case we refuse to participate in the trial, which is really a farce and not a trial, may we not be instructed as to our rights, at least as to the procedure of the prosecution, as far as we are concerned?

Mr. Content: If you will give me a minute, I think I can explain to the defendants. I am the prosecuting officer but there is no reason why the legal procedure should not be explained to them, and what it should be in this case.

(Consultation between Mr. Content and Miss Goldman.)

Miss Goldman: I understand that. I am just as pleased that you should.

The Court: I will state for the benefit of the defendants——

Mr. Content: If your Honor will give me just a minute.

The Court: Very well.

(Further consultation between Mr. Content and defendants.)

Miss Goldman: Your Honor, since we realize that the trial will only be a greater farce if we allow ourselves to be tried——

Mr. Content: I take an exception to Miss Goldman's remarks.

Miss Goldman (continuing): —to be tried without an examination, we will examine the jurors under protest. We want it to go down that we protest against any procedure which makes it impossible for the defendants to examine their own case, or familiarize themselves with certain technicalities, that they, as lay people, certainly

cannot do in forty-eight hours or even three or four days; so, under protest, we will examine the jurors.

The Court: Very good.

(Instructions by Mr. Content to Mr. Berkman.)

Mr. Berkman: Before I proceed, I want it clearly understood that I do so under protest, not having had an opportunity to prepare myself, and being furthermore in physical pain, so that you are putting me at a disadvantage in forcing me to trial against my will without having given me time to prepare.

Mr. Content: Will your Honor have the statement on the record that as prosecuting attorney, I have advised both defendants of the number of peremptory challenges allowed to them and the challenges for cause, and the manner of examination of the jurors.

The Court: Proceed, Mr. Berkman, with the examination of the jury.

(The examination of the jury then proceeded by both the defendants and the prosecuting attorney, continuing through June 27th, 28th and 29th, until late in the afternoon of the 29th, when a jury was finally accepted and sworn.)

New York, July 2nd, 1917, 10.30 A. M.

Trial resumed pursuant to adjournment.

Present:

The Court, Counsel and jury, as before.

The Court: Now, Mr. Content, you may open for the Government.

(Mr. Content opened the case to the jury on behalf of the Government.)

Mr. Berkman: The defense wants to make a motion for dismissal on several grounds.

The Court: I made the motion for you at the beginning of the case.

Mr. Berkman: I know, but——

The Court: Before Mr. Content opens you may make your motion if you want to.

Mr. Berkman: We move to dismiss the indictment for the following reasons:

1. It does not charge a crime.

2. The conscription law is unconstitutional because it involves involuntary servitude in the army, in the navy and in industrial and agricultural service.

3. The conscription law violates the moral, ethical and religious beliefs of the people of the United States.

4. The conscription law violates the conscience of the people, who are opposed to war, for the reason that human life is sacred.

5. Because the conscription law is highly immoral and prejudicial to the best interests of the country, because it is not to the best interests of the country to force people to act contrary to their judgment and their conscience.

6. Because the United States has not been invaded, nor is it in any danger of invasion, nor is it in any condition of rebellion, and therefore the law is not of a defensive but of an offensive character.

7. Because it is not just to force an American citizen to die on foreign soil against his will and deprive him of the opportunity to die in his own native country.

For all these reasons we ask that the case and the indictment be dismissed.

The Court: Motion denied. You may reserve an exception.

Mr. Berkman: Exception taken.

The Court: Very good. Now, Mr. Content.

MARY ELEANOR FITZGERALD, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Content.

Q. Where do you reside? A. My office is 20 East 125th Street.

Q. Where do you reside, I asked you? A. With friends in Connecticut.

Q. Where do you reside in New York City? A. Why, I have no residence in New York City.

Q. Aren't you living here now? A. No, when I am in the city, my address, business address, is 20 East 125th Street; and when I am staying in the city, I usually stay in the Brevoort Hotel.

Q. Where is your residence in Connecticut? A. Stamford, Connecticut.

Q. Is there any particular street address? A. No.

Q. Your mailing address is Miss Mary Eleanor Fitzgerald, Stamford, Connecticut? A. No, sir, my mail, I told you, is usually addressed to 20 East 125th Street.

Q. Now, what is 20 East 125th Street? A. Why, the office of *Mother Earth*.

Q. Is it the office of any other such publication or magazine? A. On the upper floor is the office of *The Blast*.

Q. Is it the office of any other association, volunteer or incorporated?

Mr. Berkman: I want to ask some instructions of the Court. There are certain things that the defense is perfectly willing to admit, as for instance, that the No-Con-

scription League has its office at 20 East 125th Street; but I think it will facilitate matters quite a little by either myself or Miss Goldman simply saying, "Yes, we admit it." For instance, it is admitted——

The Court: Yes, certainly.

Mr. Content: That will help a great deal, but I think Miss Fitzgerald can answer the question.

The Court: She can answer the question. There is some organization called the No-Conscription League—is that correct?

The Witness: Yes, we have the No-Conscription League. The address is 20 East 125th Street.

The Court: Is that where it has its office?

The Witness: Yes.

Q. How many floors of 20 East 125th Street are occupied by *Mother Earth* or *The Blast* or the No-Conscription League? A. Why, *Mother Earth* is on—if you count the ground floor as the first floor, *Mother Earth* is on the second floor, the *Blast* office on the third floor.

Q. Where are—on which floor are the offices of the No-Conscription League? A. Well, I have—I was the financial secretary of the League, and so most of the work was done in the office of *The Blast,* as my desk is in that office.

Q. Now, the office of *The Blast* would be on what you call the third floor, is that correct? A. It is.

Q. And is the literature of the No-Conscription League stored in the second floor in the office of *Mother Earth?* A. I don't know whether it was or not.

Q. Don't you really know? A. No, I don't know, Mr. Content.

Mr. Berkman: Hold on a minute. May I say something here? The defense admits the

No-Conscription League had its work done in the office of *The Blast*, and that the office of *The Blast* is one floor, or rather one room, a little more, and the office of *Mother Earth* is another floor. There is no use wasting time about that.

Mr. Content: But the jury don't understand these things.

Mr. Berkman: One hall and but only a few steps between one office and another office.

Mr. Content: Why can't she say that?

Mr. Berkman: Sometimes bundles will be carried from one office to another.

Mr. Content: The question is whether the literature was stored in the *Mother Earth* office on the second floor, and she said she didn't know.

Mr. Berkman: Well, she is not the editor in the department of literature.

Mr. Content: When you get on the stand you will have a chance to tell.

The Court: Everything else that you did, Mr. Berkman, except this last, was all right. You cannot state the evidence of the witnesses. You can make an admission, or you can object as you have done. For instance, if some of these witnesses go on the stand, you cannot state their evidence, as their evidence will be stated on the stand.

Mr. Berkman: Exception.

Q. Is the No-Conscription League incorporated? A. No.

Q. Is it what you call a voluntary association? A. It is a voluntary association or group, whatever you want to call it.

Q. Are there any officers of this association? A. I just told you.

The Court: Not officers, but——

Mr. Content: Officials, I mean.

The Witness: I am the financial secretary.

Q. You are the financial secretary. Is that practically equivalent to treasurer? A. Yes.

Q. Any other officers? A. Leonard Abbott is secretary.

Q. Is there any president? A. No.

Q. No presiding officer? A. No.

Q. Were Mr. Berkman and Miss Goldman members of the association?

Mr. Berkman: I object. We admit we are members.

Mr. Content: I want to examine this witness in an orderly manner.

The Court: He has the right to object.

Mr. Content: He wants to take the stand.

Mr. Berkman: You don't know what I want to do.

The Court: He objected properly, and the statement he is going to make is proper.

Mr. Berkman: I objected to the question, and said I admit that we are members of the No-Conscription League.

Mr. Content: Then why can't Miss Fitzgerald say that you were?

Mr. Berkman: It is admitted.

The Court: Now it is admitted. But, what do you say? You are on the stand? You are asked if these two defendants were members of the League—answer yes or no.

The Witness: Yes.

Q. They were? A. Yes.

Q. Were they officers of the League? A. No, sir, there were only two, as far as I told you.

Q. There were only the two officers you have mentioned? A. Yes.

Q. Were these two defendants prominent in the work of the League? A. I will have to answer that as I did before the Grand Jury.

Q. No, answer it here. A. I said to you that if you meant intelligence and ability and good speakers, then they would be prominent.

Q. I mean did they take an active part in the work? A. They were our best speakers at our meetings.

Q. Did they have anything to do with the compilation of the literature printed by order of the League?

> Mr. Berkman: I object. When certain documents are put in evidence, we will, we are ready to admit our authorship.
>
> The Court: Simply answer the question yes or no.

Q. Yes or no, that is all, whether they had anything to do with the composition of the literature? A. Yes.

Q. Besides being the financial secretary, what other work did you do? A. You mean outside of the League?

Q. Well, in that office, that is, 20 East 125th Street? A. Well, I am associated with Mr. Berkman, I help him on the magazine or the paper called *The Blast.*

Q. Are you an associate editor of *The Blast?* A. That is what it would be considered.

Q. Do you write any of the articles yourself for it? A. I have written articles for it.

Q. In the June issue, is there any article by yourself in that? A. No.

Q. And did you assist in any way in making up the June issue of *The Blast?* A. Why, I helped in getting up all the issues, yes.

Q. Suppose you just give us a general idea of what your work consists of, as what you call associate worker for *The Blast?* A. Writing and typing articles, and preparing them for the printer, or proofreading, or making up the dummy pages,

if you understand what that is; answering correspondence; dictation, etc.; clerical work.

Q. Have you any connection with *Mother Earth* or Miss Goldman? A. No, I have no official connection with *Mother Earth* or Miss Goldman, except as a friend, I have helped Miss Goldman with some of her correspondence since I have been in New York.

Q. Well, you have done certain stenographic work for Miss Goldman, since you have been in New York, have you not? A. Not in an official capacity, not as an officer in her office, but simply as a friend I have helped her with some of her correspondence and some of her lectures.

Q. Have you had anything to do with *Mother Earth* at all, in the nature of proofreading or copying? A. No.

Q. Now, do you receive any salary for acting as financial secretary of the No-Conscription League? A. No, sir, there are no salaries in it.

Q. No remuneration? A. No.

Q. For any of the officers? A. No.

Q. How is the No-Conscription League supported? A. By voluntary contributions from individuals.

Q. Personal appeals? A. Yes, personal appeals.

Q. Through the mail at the times? A. Through letters, and at our meetings, collections at the meetings.

Q. Meetings where a collection is taken from the general public, is that correct, at the meetings? A. Yes.

Q. And then you send personal appeals through letters? A. Yes, that has been done.

Q. Is there any bank account of the League, that is kept by the League, itself? A. You mean a separate bank account?

Q. Yes, a separate bank account. A. No.

Q. Is *Mother Earth* incorporated? A. Not to my knowledge, no—no, I know it is not.

Q. And is it published by the Mother Earth Publishing Association? A. I think they call it the Mother Earth Publishing Association.

Miss Goldman: It is published by the Mother Earth Publishing Association. It is not incorporated.

Q. *The Blast* is not incorporated, either, is it? A. No.

Q. Who is the publisher of *The Blast?* A. Alexander Berkman.

Q. And was that paper published in another city before it was published in New York? A. It was.

Q. In what city? A. San Francisco, California.

Q. What was the date of the last issue, I mean what was the month of the last issue in California —do you recollect? A. March, I think, 1917. I think we missed the April issue.

Q. You missed the April issue? A. I think I am correct on that. I would have to look at the file. I think we missed the April issue on account of lack of funds.

Q. Was there one issue published in New York in May, 1917? A. There were two issues published in New York.

Q. Up to date? A. Yes, May and June.

Q. Do you know who the printer of the June issue of *Mother Earth* was?

Mr. Berkman: Objected to as immaterial here. The defense admits that—one of the defendants, Alexander Berkman, admits publication and editorship of *The Blast*, a newspaper published originally in California, but recently and temporarily brought to New York. We published the May and June issues in New York City. Who the printer is is quite immaterial.

Mr. Content: I don't think it is. I have the right to show the way in which it was printed, and all that.

Mr. Berkman: I object. The paper itself shows that.

The Court: No, the paper would not be self-proving. You may answer who the printer was. You may have an exception.

Mr. Berkman: Exception.

Q. Do you know who the printer of *The Blast,* of the June issue of *The Blast* was?

Mr. Berkman: That is quite immaterial.

A. Yes, I know the name.

Q. Who was it? A. Which issue?

Q. The June issue, 1917? A. The Grayzel Press.

Q. Do you know the name of the printer of the June issue of *Mother Earth,* who it was? A. The Grayzel Press.

Q. Who is the publisher of *Mother Earth?* A. Emma Goldman.

Q. Will you tell me about what date the so-called No-Conscription League was formed? A. Well, I think, I am not sure, the first meeting, a little gathering, was on May 9th.

Q. May 9th. Where was that held, that gathering? A. It was held in the apartment of Miss Goldman, at 603 West 139th Street.

Q. And was Mr. Berkman present at that meeting? A. Yes.

Q. Was Miss Goldman present? A. Yes, Miss Goldman was present.

Q. Were you present? A. I was.

Q. How many others were present, approximately? A. About thirty or thirty-five, perhaps.

Q. Was Leonard D. Abbott present at that meeting? A. Am I to answer that?

The Court: Yes.
Mr. Content: Yes.
The Witness: Yes.

Q. Was Dr. Reitman present at that meeting? A. No.

Q. Were any resolutions offered at that meeting of any sort? A. That meeting was called for the sole purpose of organizing a protest meeting against the registration law, conscription law, which had not been passed at that time. This was the 9th of May.

Q. So I understand. This is only historical. A. Yes, and that meeting was called for the sole purpose of planning or organizing a large protest meeting against this conscription law that was about to go into effect, or that was being talked about in Congress. That little gathering, preliminary gathering, was for that purpose.

Q. But it was at that little gathering Mr. Abbott was chosen as secretary of the League and yourself as financial secretary? A. At that little gathering that evening.

Q. Was your selection as secretary the result of a popular choice, or were you appointed by Miss Goldman or Mr. Berkman, or how did you come to be financial secretary? A. Why, I was appointed—it was agreed by the whole crowd of people that were there.

Q. In other words, you were agreeable to everybody present? A. Yes.

Q. Was there a regular ballot taken, or was it sort of informal? A. No, it was informal.

Q. And the same would hold true of Mr. Abbott's selection? A. Yes.

Q. Was anything further done on that occasion? A. No, except we decided to get out letterheads and envelopes.

Q. That was decided on that occasion? A. Yes, and it was decided to get out a manifesto on that occasion, to be distributed at our meetings.

Q. Now, I show you a bundle of so-called manifestoes, are these the kind of documents you referred to, that you just referred to as manifestoes? A. Yes.

Mr. Berkman: The defense admits issuing these documents.

Mr. Content: No, that is not the question. The question I asked has to do with what she referred to in her testimony.

The Court: You may take Mr. Berkman's answer, and let the witness answer.

Q. Does this represent what you refer to in your testimony by the word "manifesto" in your previous answer? A. Yes, that is the manifesto.

Mr. Content: I ask to have this marked for identification. One of these will do.

(Marked Government's Exhibit No. 1 for Identification.)

Q. Now, you say it was decided at that meeting to issue these manifestoes. Let me ask you this:

Miss Goldman: May I say something to facilitate matters? It was not decided at that meeting to publish this manifesto.

Mr. Content: Now Miss Goldman is testifying. Now, if you will only let me go ahead, I will get ahead much more quickly.

The Court: Yes, make a note of it, and when Mr. Content is through, if you think Miss Fitzgerald has made any errors, you can ask her questions.

Mr. Content: Yes, I think we will proceed much more effectively.

Miss Goldman: All right, then.

Mr. Berkman: We do not deny that document. It is only a question of the date.

Q. Now, at this time, had the subject matter of these manifestoes been decided upon? A. No.

Q. It was merely decided, according to your testimony, that some sort of a manifesto was to be gotten up? A. Yes, merely obtain the information. The main purpose of that meeting was to plan a large protest meeting.

Q. Well, this Government's Exhibit 1 for Identification, when was the subject matter of that passed on—only approximately? A. I can't tell you that, I don't know.

Q. Was it before the meeting of May 18, 1917? A. That I know. It was before the meeting of May 18th.

Q. And your best recollection would be that it was after this informal meeting? A. Yes.

Q. It had not been printed at that meeting? A. No.

Q. So that it was somewhere between those dates? A. That is my best recollection. I have no records, because you have them all.

Q. Do you know who composed the subject matter of this Government's Exhibit 1 for Identification? A. My understanding is of that manifesto that Miss Goldman wrote it.

Q. And do you know what printer physically printed that manifesto—just do you know it? A. Yes.

Q. Who was it? A. The Graphic Press.

Q. Do you know who placed the order for printing of these manifestoes? A. No, sir, I cannot tell you.

Q. After this informal meeting of May 8th—this informal meeting was May 8th? A. May 9th.

Q. Well, when was there another meeting held? A. There was a little preliminary meeting on the 16th of May.

Q. Where was that held? A. Planning for funds, arranging for committees, etc., for this meeting of May 18th.

Q. Where was this meeting held on the 16th? A. The May 16th meeting was held in the office of *The Blast,* or the *Mother Earth.*

Q. Somewhere at 20 East 125th Street? A. Yes, sir, 20 East 125th Street.

Q. At whatever headquarters there were of the No-Conscription League itself? A. Yes.

Q. Was Mr. Berkman present at this meeting of May 16th?

Mr. Berkman: No. The defense admits Mr. Berkman was present.

The Court: What is your recollection?

The Witness: My recollection is he was present at that little gathering.

Q. And is it your recollection, Miss Goldman was present or not?

Miss Goldman: She was present.

Mr. Content: I am asking for the witness's recollection.

The Court: The stenographer will take the statement of the defendant and of the witness.

A. Miss Goldman was present.

Q. Were you present? A. I was.

Q. Was Mr. Abbott present? A. No.

Q. How many others were present besides Mr. Berkman, Miss Goldman, and yourself, approximately—always approximately? A. Oh, perhaps fifteen or twenty people.

Q. And the meeting, that is of May 18, 1917, was held where? A. It was held at what is known as the Harlem River Casino.

Q. Is that an auditorium or a hall? A. I think it is called a hall, it is a large hall.

Q. Were you present at that meeting? A. I was.

Q. And that was the night of May 18th? A. The night of May 18th.

Q. Was Miss Goldman a speaker at that meeting, according to your recollection? A. She was.

Q. Was Mr. Berkman a speaker at that meeting according to your recollection? A. Yes.

Q. Your best recollection is that Miss Goldman did speak, whether you heard her speech or not? A. Yes.

Q. And do you know how much was paid for the rental of the auditorium or hall on that evening? A. Yes, I know.

Q. What was it? A. Fifty dollars.

Q. Did you pay the fifty dollars personally? A. I paid part of it.

Q. Did you pay the part of the fifty dollars, yourself, you personally? A. I did.

Mr. Berkman: Objection. The defense admits Alexander Berkman gave a deposit for this meeting, and attended to the arrangements.

Mr. Content: That does not agree with her testimony. She said she gave some. Just let me straighten this out.

The Court: Let me get that straight. Did you physically pay the money?

The Witness: I paid a part of it.

Q. Do you remember what part you paid? A. As I remember it, I gave forty dollars.

Q. I show you an original contract, signed No-Conscription League, and in ink Alexander Berkman, and——

Mr. Berkman: This is my signature, and the defense admits this signature as being that of Alexander Berkman.

Mr. Content: Do you concede you paid a ten-dollar deposit?

Mr. Berkman: I do not concede. I made a statement that I made the arrangements for the meeting and paid a deposit of ten dollars for the meeting. I am quite sure it was ten dollars.

Q. I show you a duplicate copy, and ask whether that is the receipt you obtained from Mr. Motz, manager or proprietor of this Harlem River Park and Casino? A. Yes, I should say that was the duplicate he gave me.

Q. At the time you paid the balance due? A. Yes.

Q. Did you pay that balance on the night of the meeting? A. The night of the meeting.

Q. Was it in cash, or check, if you recall? A. By check.

Mr. Content: I offer in evidence the duplicate receipt, and ask to have the original marked for identification. No, I offer this in evidence. Mr. Berkman concedes this signature.

The Court: Yes.

Mr. Content: I offer the original contract, and the receipted contract in evidence.

(The original contract was marked Government's Exhibit No. 2 and the duplicate receipt was marked Government's Exhibit No. 3.)

Mr. Content: This is the original. I want to read the whole contract. (Reads to the jury.)

Q. Miss Fitzgerald, I show you the letterhead of the No-Conscription League, 20 East 125th Street, and ask you whether or not that was printed by the Graphic Press, the letterhead? A. I can't say.

Q. What is your best impression? A. I really don't know.

Q. Now, this work is multigraph work, the body of this circular letter which I show you? A. Yes, that is multigraph work.

Q. By whom was that multigraph work done, do you know? A. I don't know who did that multigraph work.

Q. You really don't? A. I don't know.

Q. Were you not the financial secretary of the League? A. I cannot tell without you give me our records to look through.

Q. Which records do you want? A. The bills and things.

Mr. Berkman: The defense is going to admit every document that we issued, every signature that is genuine and all of our work that was done. But there was so much work done in that office, for various purposes, downstairs the *Mother Earth,* upstairs *The Blast* and No-Conscription League, and then we had various other troubles, sickness, etc., so that there is no way for any particular person to know all about the work done.

Q. Then you do not remember who did that multigraphing work? A. I can't tell you what multigraph company did that, without seeing the receipted bill—I mean that particular letter.

Q. Did you give the work to different multigraph companies?

Mr. Berkman: Certainly.

A. Well, there were different companies that did different letters, and I don't know which one did that one.

Q. Just take and look at this letter dated May 25, 1917. You have seen that form letter before? A. Yes.

Q. Is this one of the regular form letters of the No-Conscription League? A. Yes.

Q. And were letters of this type sent out through the mails? A. Through the mail to different lists.

Q. How—where did you obtain your lists? A. Well, I had them——

Mr. Berkman: Exception. The defense admits the *Mother Earth* and *The Blast* lists were used for that purpose.

Q. Mr. Berkman has stated the *Mother Earth* and *The Blast* lists were used for that purpose. Didn't you send them to people who were not on either of those lists? A. Yes, there were several lists that were used, different lists.

Q. For example, I received one, and I am not a subscriber to *Mother Earth*. Do you know how they would obtain a name like mine—not that that is in evidence, but I just mention that, because I am not a subscriber.

Miss Goldman: Miss Fitzgerald has already stated that she has been in the office only a very short time, having come from California. Now, in the office of *Mother Earth* and *The Blast* we have at least a dozen different lists, used for a dozen different purposes, and Miss Fitzgerald uses the list.

The Court: Now, that is perfectly all right, that is perfectly proper. Mr. Berkman said, as I understand it, and you may correct me if I am in error, that there was a *Mother Earth* list and a *Blast* list, to whom you sent this paper which has just been shown you by Mr. Content?

The Witness: Yes.

The Court: Now, you also said there was some other list.

The Witness: There were some others.

The Court: Now, what were those lists?

The Witness: Well, there were lists I got from Miss Goldman, I don't know where she got them.

Mr. Content: That is an answer. That is all I want.

The Court: And by lists, you mean collections of names and addresses?

The Witness: Yes.

Mr. Content: That is all I want.

Q. Now, look at this form letter, which is undated——

The Court: By the way, this other one, you better have marked.

Mr. Content: I will have this marked for identification, Government's Exhibit 4 for Identification.

(Marked Government's Exhibit No. 4 for Identification.)

Q. I show you another form letter, beginning, "Dear Friend," and ask you is that one of the form letters sent out by the No-Conscription League? A. Yes, this is one of the form letters.

Q. And your testimony with regard to Government's Exhibit 4 for Identification would also apply to this one? I mean the same would be true of this letter as of the previous letters. A. In what respect?

Q. I mean as to its being sent out according to lists? A. Yes.

Mr. Content: I ask this to be marked for identification.

(Marked Government's Exhibit 5 for Identification.)

Mr. Content: That is an undated one.

Q. I show you a third, dated June 7, 1917, and I ask you is that, too, a form letter of the No-Conscription League? A. May I see both of those letters again?

Q. Surely (handing same to witness). I think this is the first, this was what I showed to you first, it is dated May 25. And this is the second one, that is undated. The first one which I showed you was dated May 25th, 1917, and the second was undated, and the third dated June 7. Now, will you answer this question, first—is the one of June 7th also a form letter? A. Yes, those are form letters, but I am trying to figure out the difference in these two letters.

Q. There is very little difference between the undated one and the one of June 7th. I think the one of June 7th acknowledges the receipt of a communication. A. Yes, those are form letters.

Q. All three are form letters? A. Yes.

Q. All sent out according to lists? A. Yes.

Q. Either from *Mother Earth* or some other list as submitted to you by Miss Goldman? A. Yes.

(Letter of June 7th, marked Government's Exhibit 6 for Identification.)

The Witness: Mr. Content, one of those letters is an answer to their sending funds to us.

Q. That is the one of June 7th? A. Yes.

Q. That is Government's Exhibit 6 for Identification? A. Yes.

The Court: Let me ask something before I forget it. When was this name, "No-Conscription League," adopted—was that adopted at that first meeting on the 9th of May?

The Witness: At the first meeting.

Q. That is the informal meeting held at Miss Goldman's apartments? A. Yes, the very first meeting held.

Q. I show you an envelope addressed William C. Demorest, 18 East 94th Street, on the letterhead of the No-Conscription League, and I show you a form

letter of May 25, 1917. Just look at them, and say whether it corresponds with Government's Exhibit 4 for Identification—that is, the same letter I previously showed you? A. Yes.

Q. I show you this manifesto, and ask you whether that is the same as Government's Exhibit 1 for Identification, the first one I showed you? A. It is.

Q. For identification, I mean, Exhibit No. 1? A. A. Yes.

Q. I show you a hand bill, announcing the meeting of June 4, and ask you whether that hand bill was gotten out by the No-Conscription League? A. It was.

Q. And would the same be true of the hand bill as of the other documents?

Mr. Berkman: Objection. The defense admits having hand bills for each particular mass meeting.

Q. I will show you this hand bill. Do you concede that is one of the hand bills of the No-Conscription League?

Mr. Berkman: This is one of the hand bills issued by the No-Conscription League for one meeting.

Mr. Content: I want to ask whether this letter and those enclosures were sent out at the direction of the League, Miss Goldman, and yourself. You don't have to admit it, if you don't want to.

Mr. Berkman: The No-Conscription circular and the No-Conscription hand bill, and the circular letter?

Mr. Content: Of May 25th.

Mr. Berkman: Of May 25th. The defense admits these were sent to various people.

Mr. Content: Through the mail?

Mr. Berkman: Through the mail, yes.

Mr. Content: I ask to have these three marked for identification.

(Marked for identification as follows:)

The Court: They will be marked Government's Exhibit 7 for Identification.

Mr. Content: 7-A, 7-B and 7-C.

The Court: 7-A, 7-B, 7-C.

Mr. Content: Mark the envelope A.

The Court: Are there just the two?

Mr. Content: There are 3 enclosures. Mark the envelope 7, the circular 7-A, the hand bill 7-B and the manifesto 7-C.

(Marked 7, 7-A, 7-B and 7-C for Identification.)

Q. I show you a rubber stamp, "Alexander Berkman," and ask if you know whether that was placed there with Mr. Berkman's consent, or direction?

Mr. Berkman: Objection. The defense admits that whenever Mr. Berkman was too busy, or probably sick, the direction was to use his rubber stamp.

Mr. Content: Then this rubber stamp, "Alexander Berkman," was put there with your consent——

Mr. Berkman: Yes, sir, to that document, it was put by my direction and request.

Mr. Content: I show you—maybe we can save time by speaking together. Here is another one of the same type, sent to the City Editor of the *New York Times,* exactly the same. The only difference is that this has no handbill, and it has a subscription blank.

Mr. Berkman: Yes. Similar letters were sent to the editors of the press, not because we considered them friends, but simply to let them know about the work being done.

Mr. Content: Then you concede that this letter to the City Editor of the *Times,* with

its inclosures, was sent out by your directions?

Mr. Berkman: By my directions, yes.

Mr. Content: A letter and manifesto and subscription list.

Mr. Berkman: Yes, by my direction.

Mr. Content: Now I ask this be marked Government's Exhibit 8 for Identification, that is the envelope, and 8-A for the letter, and 8-B the manifesto, and 8-C the subscription blank.

(Marked Government's Exhibits 8 and 8-A for Identification.)

Mr. Content: I have another one, Mr. Berkman. I think that is all I will cover. It is the same thing.

Mr. Berkman: That is the same letter, that is admitted.

Mr. Content: I will only ask to have the envelope marked in this case. A letter addressed to Clarence Lyman Collins, postmarked May 30, 1917, Station L, was shown to Mr. Berkman, and he said that that, too, was sent out the same as the others.

Mr. Berkman: It was sent out in the general work of the No-Conscription League.

Mr. Content: Mark the envelope Government's Exhibit 9.

(Marked Government's Exhibit 9.)

Mr. Content: Now, I show you another letter, postmarked New York, May 25, 1917, containing, or rather contained in the envelope of the No-Conscription League, addressed to Frank Harrison, of Denver, Colorado, and I show you the same circular letter of May 25, 1917, and with a rubber stamp, "Emma Goldman." Will you please state whether or not the rubber stamp was placed there by Miss Goldman's direction.

Mr. Berkman: Objection. The defense will simplify matters by explaining that the same circular letter was sent out to the subscribers of *The Blast,* the paper of which I am editor, and those were signed in my name; and the same letter was sent out by Miss Goldman to the subscribers to her magazine, and signed by her or by her rubber stamp.

Mr. Content: Will Miss Goldman concede the rubber stamp was put there with her consent?

Miss Goldman: If I may state now, I have done a great deal of lecturing all over the country, and I cannot sign all the letters, but a rubber stamp is used in the office to sign letters that go out to *Mother Earth* subscribers.

The Court: The only question is, whether this was done with your consent and direction—that is the question.

Miss Goldman: Is that the same letter?

Mr. Content: Yes, that is the same letter there with the rubber stamp, "Emma Goldman."

Miss Goldman: Yes, done with my consent.

Mr. Content: That will simplify it very much.

Miss Goldman: Yes.

Mr. Content: I offer that other one here in evidence, with Miss Goldman's signature, the letter to Harrison, and ask to have this marked Government's Exhibit 10 for Identification.

The Court: That is the letter to Harrison?

Mr. Content: Yes, May 9.

The Court: Exhibit 10 is the envelope to Frank Harrison, 10-A the letter of May 25, and 10-B, the manifesto.

Mr. Content: I think we will use the term "manifesto," thereby simplifying matters.

The Court: Yes, Miss Fitzgerald said that.

Mr. Content: And 10-C is the subscription blank.

The Court: I think you failed to note the contents of Government's Exhibit 9 for Identification.

Mr. Content: I did not offer that. I did not have that marked separately. I showed it to Mr. Berkman, and they were exactly the same as Exhibit 8.

The Court: Very good. That is Government's Exhibit 9 for Identification, the envelope with the contents.

Mr. Content: Yes, the envelope with the contents, and they are exactly the same as Government's Exhibit 8 for Identification.

The Court: Very good.

Mr. Content: And this is Government's Exhibit 10 for Identification (indicating).

A. I want to say something regarding those letters.

Q. Surely.

The Court: Yes.

A. I want to explain in using Mr. Berkman's name and Miss Goldman's name, having charge of sending out these lists, I got the *Mother Earth* list from Miss Goldman, and I used *The Blast* list, or the people that know Mr. Berkman, from *The Blast* list, and sent this letter. To the people that have known Mr. Berkman, I put on the rubber stamp, Alexander Berkman, and on the *Mother Earth* list, the ones that know Miss Goldman, I had her stamp put on. I just didn't want you to misunderstand that. Some were signed in my own name.

Q. Take Government's Exhibit 7, addressed to Mr. Demorest, who does not happen to be a sub-

scriber to either of the publications, which letter was signed, "Alexander Berkman." Do you recall where you got the list concerning his name? A. I cannot.

Q. Now, I show you a telephone contract, dated May 12, 1917, and ask you whether that is Mr. Berkman's signature on the right-hand side? A. Yes, that is Mr. Berkman's signature.

Q. I show you a——

Mr. Berkman: May I see that, please (handed to Mr. Berkman). That is my signature, yes. The defense admits the signature of Mr. Berkman.

Mr. Content: I ask to have this marked for identification.

(Marked Government's Exhibit No. 11 for Identification.)

Q. I show you a telephone contract dated December 30, 1914, signed Alexander Berkman, by Emma Goldman, Attorney-in-fact, and ask you whether that is Miss Goldman's signature? A. You asked me is that Miss Goldman's signature?

Q. Yes, Alexander Berkman, by Emma Goldman, Attorney-in-fact? A. I would say it was her signature.

The Court: You have seen her write?

The Witness: Yes.

Q. You are familiar with her handwriting? A. Yes.

Miss Goldman: May the defense see it? (Same handed to Miss Goldman.) Yes, that is my signature, yes, indeed.

Mr. Content: I ask to have this marked for identification as Government's Exhibit No. 12?

Mr. Berkman: Is that the first contract?

Mr. Content: Yes.

Mr. Berkman: 1914?

Mr. Content: 1914, and has been renewed from time to time. That is the original (indicating).

Q. Miss Fitzgerald, I show you a receipt of the Walker Engraving Company for engraving work.

Miss Goldman: Objection. I have always dealt with the Walker Engraving Company myself.

Mr. Content: I have not asked a question.

The Court: Wait a moment.

Q. (Continuing) And I ask whether that is Mr. Berkman's signature attached to the receipt, dated May 14?

The Court: What year.

Mr. Content: This year. It is not dated, but it has reference to this year.

A. Yes, I think so, I would say it is Mr. Berkman's signature.

Q. You have seen him write? A. Yes.

Q. You are familiar with his signature? A. Yes.

Mr. Berkman: May the defense see that?

Mr. Content: Yes (handing Mr. Berkman paper).

Mr. Berkman: That is my signature. The defense admits this signature.

Mr. Content: I ask to have that marked Government's Exhibit 13 for Identification.

(Marked Government's Exhibit 13 for Identification.)

The Court: Was that May 14, 1917?

Mr. Content: Yes.

Mr. Content: Well, I produce another receipt of the Walker Engraving Company for a large engraving marked "Conscientious

Objector," and ask Mr. Berkman whether he wants to concede that that is his signature to the receipt.

Mr. Berkman: I will [illegible] that is a receipt for another electrotype.

Mr. Content: Well, that is the copy, you know, not the original.

Mr. Berkman: Yes.

Mr. Content: The copy.

Mr. Berkman: That is the copy, I know I signed for it.

Mr. Content: Then, this is Government's Exhibit 14 for Identification. (Same so marked.)

Mr. Content: I show Miss Goldman a copy of a lithographic engraving entitled, "June 5, in memoriam," and ask whether that is the signature of the Mother Earth Publishing Association?

Miss Goldman: Yes, it belongs to *Mother Earth*.

Mr. Content: I ask to have that marked Government's Exhibit 15 for Identification?

(Marked Government's Exhibit 15 for Identification.)

Mr. Content: I show you, Mr. Berkman, an engraving by Maurice Becker, with the words "Free Russia" in one part thereof, and ask you whether you will concede that was delivered to you?

Mr. Berkman: Yes, the cut of a cartoon for the cover of the last issue of *The Blast*.

Mr. Content: The cut for the cover of the last issue of *The Blast*. I ask to have that marked Government's Exhibit 16 for Identification?

(Marked Government's Exhibit 16 for Identification.)

Q. Now, Miss Fitzgerald, I show you two wrappers containing publications which were found in

the office of *Mother Earth* or the No-Conscription League, on the day of the arrest of Emma Goldman and Alexander Berkman. Do you know if you can identify these, tell us what they are?

Mr. Berkman: Objection, on the following grounds: As hundreds, maybe thousands, of copies of these have been sent out, it will be quite impossible for anyone to identify one particular wrapper.

Mr. Content: She may examine them, take them out, and tell what they are.

Mr. Berkman: But the defense will concede that hundreds of such packages were being sent out all the time by *Mother Earth*, and by *The Blast*, for the furtherance of their work.

Miss Goldman: Your Honor, this is the magazine, *Mother Earth*, which goes out every month for the last twelve years.

Mr. Content: Then it is conceded these are the issues of *Mother Earth* of June, 1917, which were placed in wrappers for the purpose of going out.

Miss Goldman: If that is the magazine, then I admit it.

Mr. Content: They were placed in wrappers for the purpose of being sent out.

Miss Goldman: They were.

The Court: What issue?

Mr. Content: June, 1917.

The Court: Have they been marked?

Mr. Content: It is not necessary at this time because I will offer them all later through the special agent.

The Court: Very well.

Q. Now, Miss Fitzgerald, you have stated in a previous part of your examination, that the No-Conscription League was supported by voluntary contributions, and it had no special bank account of

its own in its own name, is that correct? A. That is correct.

Q. What was done with the moneys collected at these several meetings, which were held under the auspices of this so-called No-Conscription League? A. The moneys that were collected in the meetings?

Q. Yes. A. Well, the money collected in the meetings, hardly covered the expense of the different meetings.

Q. I didn't mean that. I meant was it paid out direct, in cash, or put in bank deposits, or what was done with it, physically? A. Some was paid out in cash, some was put in the bank, and then paid out.

Q. What bank? A. You mean the name of the bank?

Q. Yes. A. The Produce Exchange Bank.

Q. Is that the Harlem Branch? A. Yes.

Q. The moneys that were placed in the Produce Exchange Bank, in whose account were they placed, to the credit of whose account?

The Court: In whose name?

A. Well, checks and money, ones that came in for the No-Conscription League, I endorsed over to Alexander Berkman, and they were put under his account.

Q. I show you a letter of June 4, 1917, signed Alexander Berkman, and addressed to the New York Produce Exchange Bank, and ask you whether that is Mr. Berkman's signature on the one side, and yours in the left-hand corner? A. No, I signed both of them, I wrote the letter.

Q. You wrote that letter? A. Yes.

Q. On the typewriter? A. Yes, sir, on the typewriter.

Q. And signed both? A. I signed both.

The Court: Was that with Mr. Berkman's consent?

The Witness: Yes. May I explain?

Mr. Content: Yes.

The Witness: I sent a young man to the bank with some No-Conscription checks, etc., for the No-Conscription League, and I had instructed him to have them deposited to Mr. Berkman's credit, because we were using just the one check book, and the bank refused to do that, unless I should sign a statement, or Mr. Berkman would sign a statement, to the house that it was all right, and so this was done in compliance with the request of the bank.

Mr. Content: Well, I offer this in evidence. (Same handed to Mr. Berkman.)

The Court: It is just an authority to the bank to accept Miss Fitzgerald's deposits.

Mr. Content: I offer it in evidence.

Mr. Berkman: No objection.

(Marked Government's Exhibit No. 17 in Evidence.)

Mr. Content: This is on the letterhead of the No-Conscription League, Leonard D. Abbott, Secretary, M. E. Fitzgerald, Financial Secretary, telephone Harlem 6194, No-Conscription League, 20 East 125th Street, New York. (Reading Exhibit No. 17.)

Q. Now, Miss Fitzgerald, I show you a stub check book of the Produce Exchange Bank, and ask you whether that is the stub check book of Alexander Berkman? A. Yes.

Q. When did you come to New York, this last time, I mean? A. I have been here about two months. I don't know the date when I came.

Q. Well, now, this Produce Exchange Bank, was that Mr. Berkman's personal account? A. He had different funds, for *The Blast*, his personal——

Q. That is what I mean. What does this account represent, funds of *The Blast*, that is, the publication? A. Yes.

Q. I ask you now whether that is the personal account of Mr. Berkman, and what funds are deposited in that account? A. A personal account, and different funds of *The Blast,* funds for different labor defense funds——

Q. And what else? A. And funds I turned over to the No-Conscription League fund.

Q. Is that about all—*The Blast,* and these labor funds, and these personal accounts, and the No-Conscription League? A. Yes, so far as I can recall them.

Q. I show you a stub of check No. 58, May 7, Graphic Press, whose handwriting is the stub in? A. Alexander Berkman's.

Q. The stub check No. 59, May 9th, in whose handwriting is that? A. Mr. Berkman's.

Q. And No. 60, B. L. Michael? A. The same.

Mr. Content: That is May 11, 1917.

Q. And 61, May 12, is that Mr. Berkman's also? A. Yes.

Mr. Content: That is Sachs & Steinfeld.

Q. Then I show you 62, 63, and 64, stubs addressed to three different newspapers. Are those in Mr. Berkman's handwriting? A. Yes.

Q. And 65 and 66, two checks to *Die Warheit,* is that Mr. Berkman's handwriting? A. I would say they were.

Q. And No. 67, May 15, is that your handwriting, to *The Call?* A. That is my handwriting.

Q. And No. 68, is that Mr. Berkman's? A. I would say it was.

Q. And 69 and 70, are those yours? A. Those are mine.

Q. 71, is that yours? A. That is mine.

Q. No. 72, is that Mr. Berkman's, to the Graphic Press? A. Yes.

Q. May 21, 1917? A. Yes.

Q. 72, Harlem Park Casino, May 18, is that your handwriting? A. Yes.

Q. No. 74, May 21, Howard Minor, is that your handwriting? A. Yes.

Q. And the same as to No. 75, to *The Call?* A. Yes.

Q. And 76? A. Yes, those are for ads. for the meetings.

Q. 77, salary, janitor? A. My handwriting.

Q. 79, cash, is that Alexander Berkman's? A. I should say it was Mr. Berkman.

Q. 78, Hunt's Point Palace, the 28th of May, 1915, is that your handwriting, $25? A. Yes.

Q. And No. 80, the Graphic Press, May 31, is that yours? A. Yes.

Q. And No. 81, another one to the Graphic Press, is that your handwriting? A. Yes.

Q. And 82, 83 and 84, are those in your handwriting? A. Yes.

Mr. Content: All dated June 2nd.

Q. And 85, 86 and 87, are your handwriting? A. Yes.

Q. And 88, 89 and 90, are those your handwriting? A. Yes, mine.

Q. And Nos. 91, 92 and 93, all yours? A. All mine.

Q. And is No. 94 yours? A. Yes.

Q. Mrs. E. J. Ballantine? A. Yes.

Q. And 95, is that Mr. Berkman's, Alexander Berkman? A. Yes.

Q. 96, is to the Graphic Press, June 11, 1917? A. That is mine.

Q. So that all of those which I have shown you are either in your handwriting or that of Mr. Berkman? A. Yes.

Mr. Content: I offer this check stub book in evidence.

Q. While Mr. Berkman is looking at that, and examining it, I want to ask you whether you sometimes signed Miss Goldman's name as attorney-in-fact on her account in the Produce Exchange Bank? A. Yes, I have an authority to sign Miss Goldman's name.

Q. Does she have an account of her own in the same branch? A. Yes.

Q. Do *Mother Earth* funds go into Miss Goldman's name? A. *Mother Earth* funds? I can't say, I am not sure whether she has a *Mother Earth* account and an Emma Goldman account or not.

Q. But, the No-Conscription funds all went into Mr. Berkman's? A. Yes.

Q. And not into Miss Goldman's account? A. Not to my knowledge.

Q. You were the financial secretary? A. Yes.

Q. And when subscriptions were received through the mails, after they came into your hands, what did you do with them? A. You mean subscriptions for what?

Q. For the No-Conscription League. I am not inquiring into the regular subscriptions to your two magazines. I don't mean that, but subscriptions to this work of the No-Conscription League? A. Yes, they came to me.

Q. And if they were checks, you put them in the Berkman account, in the Produce Exchange Bank? A. Why, we put them in the little No-Conscription League account book which you have there on the table.

Q. That is this book (indicating)? A. Yes, but the deposit was put in the name of Alexander Berkman.

Q. And is this your account book of the receipts of the No-Conscription League? A. Of the No-Conscription League?

Q. Of the No-Conscription League? A. Yes.

Q. I don't mean for the papers. A. Yes.

Q. And was this kept by you from May 11th on? A. Kept by me.

Mr. Content: I offer this in evidence.

(Same examined by defendant Berkman.)

Mr. Berkman: I cannot understand what object he has for putting this book, this check book in as an exhibit. We would object to putting in amounts, or the record of any amounts prior to May 18.

Mr. Content: Some of this printing was contracted for before May 18th.

Mr. Berkman: Prior to May 18th? The indictment charges something done since May 18th.

Mr. Content: May I just look at that? I may not offer it for that purpose (examining book). All right, I only offer it for those stubs that relate to check transactions since May 18th.

Mr. Berkman: Since May 18th.

The Court: So that that don't take in the one on the evening of May 18th, for that meeting?

The Witness: Yes, there was one on that day.

The Court: Was that included in the offer—it should be.

Mr. Content: That is included. The first check on May 18th is No. 69, and I will not offer anything before that date.

The Court: Very well. 69 and succeeding checks are received.

Mr. Content: 69 to 96, both inclusive.

The Court: And the Clerk may just put a little rubber band at that point, and the preceding checks.

Mr. Content: I will fix that.

The Court: Very well.

(Check book marked Government's Exhibit No. 18 in Evidence.)

Mr. Content: Now I offer the receipt book, the receipts of the No-Conscription League in evidence.

Mr. Berkman: Also since May 18th?

Mr. Content: Now, in this case, I think I have a right to go back of that time.

The Court: He has no objection.

Mr. Berkman: We have no objection.

Mr. Content: I offer this in evidence then.

(Marked Government's Exhibit No. 19 in Evidence.)

Cross-examination by Mr. Berkman.

Q. Miss Fitzgerald, what is the character of your work on *The Blast?* A. Well, I helped with typing the articles, I helped with the proofreading, and helped with making up the dummy pages, to send to the printer, and also in the subscription lists, to see that all the names were entered properly, and so on.

Q. In other words, you were a co-worker, what we know as a co-worker on the paper. A. Yes.

Q. You were co-operating in the work? A. Yes.

Q. When was *The Blast* first established? A. The first issue of *The Blast* appeared in San Francisco, California, on January 15, 1916.

Q. Did it have any connection with *Mother Earth,* or was it an independent paper? A. *The Blast* has always been an absolutely independent paper from *Mother Earth.*

Q. An absolutely independent paper? A. Yes.

Q. Can you tell us how *The Blast* happened to be established, what year do you say it was? A. In 1916.

Q. What month? A. January 15, 1916.

Q. Was that the first issue? A. That was the first issue of *The Blast.*

Q. Where was I at the time? A. You were in San Francisco, California, at the time.

Q. When had I left New York, if you know? A. You left New York in November, 1915.

Q. Up to that time, what was the position that I held on *Mother Earth?* A. Why, you were one of the editors.

Q. Was I the publisher of *Mother Earth?* A. No.

Q. Was I at any time the publisher of *Mother Earth?* A. Not to my knowledge.

Q. I was one of the editors? A. You were one of the editors.

Q. And when did I give up my position as editor of *Mother Earth*, approximately? A. It was in November, 1915, and you started a lecture tour across the country.

Q. You mean about two years ago, approximately? A. Yes.

Q. And since then, have I had any connection with *Mother Earth*, as one of the editors? A. Not at all, no.

Q. And when I left New York in 1914, November— A. 1915.

Q. Did I have any idea of starting a paper in San Francisco?

The Court: You said in 1914, you meant 1915?

The Witness: We left in November, 1915.

Mr. Berkman: I beg your pardon, yes.

Q. Did I have any idea of starting a paper in California, when I left New York, what was the purpose for my leaving New York? A. You left New York to engage in lectures, I arranged these lectures, from New York to San Francisco, a series of lectures in different cities.

Q. I am trying to refresh your memory. You mean you left New York with me, or did you go ahead of me a few weeks— A. I left New York

about ten days or two weeks ahead of you, for Pittsburgh.

Q. What was your purpose in going there? A. I arranged your lectures.

Q. That is, the lecture at Pittsburgh, and at other cities? A. Cleveland, Detroit, Chicago, Denver, Los Angeles, San Francisco, Seattle, Berkeley, Tacoma——

Q. What was the purpose of our leaving New York? A. First arranging lectures, and afterwards ——

Q. What was the purpose—I don't mean the object?

The Court: You may suggest the question, to refresh her memory.

Q. Wasn't the object lectures? A. The object was lectures.

Q. Was the object lectures, or the publication of a paper, that is what I want to point out—what was the object of leaving New York to speak in Pittsburgh and other cities? A. To establish a paper on the Coast, and give these lectures——

Q. No, wait a moment. What was the object in November, 1915, did we have any idea of a newspaper in California when we first left New York? A. No, not to my knowledge.

Q. Had I ever been in San Francisco before? A. No, not to my knowledge you had not.

Q. And, therefore, you reached San Francisco before me for the purpose of arranging the lectures? A. That is correct.

Q. Hiring a hall, getting out printed matter, etc., and afterwards, after we were through with the lecture at San Francisco, did we go to Portland, and Seattle, or at least did the speaker go to Portland and Seattle? A. You did, yes.

Q. Do you know whether I returned to New York during that trip? A. During that trip you returned to New York the next summer.

Q. What was the purpose? Had it any connection with some labor organization cases? A. It was in reference to raising funds for a labor organization.

Q. In what city? A. You left from Los Angeles.

Q. And I returned then to New York in connection with labor cases in San Francisco? A. No.

Q. Or, Los Angeles rather, I beg your pardon. A. Yes.

Q. And that was in what year?

The Court: She left in November, 1915, so that it was the next summer, wasn't it?

The Witness: It was the next summer, the summer of 1916.

The Court: You can refresh your memory, if you think it was at some other time.

Mr. Content: I will concede it was the time he said it was.

Mr. Berkman: Well; I think we want to get the dates. It was something very important on my part with regard to a case of labor that I came to New York from the Coast, in a labor case, from Los Angeles, and only after I went back to California did I start *The Blast.*

The Court: What is your recollection of the date?

Mr. Berkman: My recollection is that we left New York in 1914, not 1915.

Mr. Content: What does Mr. Berkman want to bring out by this witness in this part of it? I will concede it.

Mr. Berkman: The point, for the present, is that *The Blast* was established after I had been lecturing in the West for about a year or a year and a half, and that it was the result of the work I had done on the Coast.

The Court: Very good.

Mr. Content: All right.

Mr. Berkman: And that it had absolutely no connection with *Mother Earth*.

Mr. Content: Very well, that is conceded. The Government concedes that.

The Court: Yes.

Mr. Content: At that time.

Mr. Berkman: Yes, at that time.

Q. Now, *The Blast* began in San Francisco on what date? A. January 15, 1916.

Q. How long did it continue there? A. Continued a little over a year, until May 1 of 1917.

Q. Who was the editor of *The Blast* in San Francisco? A. Alexander Berkman.

Q. And then when I had occasion to come East, who remained there as the editor? A. I did.

Q. What was the reason for my coming East? A. In the interest of the labor cause that is now being fought out on the Coast, San Francisco.

Q. In the interest of another labor case, the first was Los Angeles, and the other one San Francisco? A. Yes, the Mooney case.

Q. Did I come to New York permanently or temporarily? A. Temporarily.

Q. On their behalf, that case from San Francisco? A. Yes, that case in San Francisco.

Q. And all the time I was in New York, what was I busy with? A. You were busy gathering funds, getting publicity for this labor case in San Francisco.

Q. Was I busy with it all the time I was in New York? A. As far as I know, you were.

Q. Was it my intention to return to continue the publication, or rather continue to be one of the editors of *The Blast* in San Francisco? A. It was.

Q. And when I found I would have to be here in New York a little longer than expected, did I ask you to bring *The Blast* to New York, permanently or temporarily? A. Temporarily.

Q. It was our intention to publish *The Blast* just a few issues in New York? A. That was my understanding.

Q. Was it your understanding that I intended, or the object was that we were going to go back to San Francisco and continue the publication of the paper there? A. Yes.

Q. Do you know, or do you remember that about two months ago, or so, I had started on my way back to San Francisco? A. Yes.

Q. To continue the publication of *The Blast* there? A. Yes, to continue the publication of *The Blast* there.

Q. How far did I go? A. Why, as far as Chicago.

Q. Went to Chicago? A. Yes.

Q. And when I was in Chicago, did I receive a wire from New York, asking me to return? A. To continue your work for this San Francisco case.

Q. Do you remember that since my return from Chicago, there was organized a large ball in behalf of our San Francisco friends—is that right? A. Yes, I was not here, but I know there was such a thing.

Q. But you have seen the publicity matter? A. Yes.

Q. And you know that was the reason I came back from Chicago to New York? A. Yes, that is my understanding.

Q. And that was the reason I did not continue on my way to San Francisco? A. That is correct.

Q. Now, after my return from Chicago to New York, to take charge of this affair in behalf of the financial interests of the San Francisco friends, what was I busy with, remaining in New York for the time being? A. Busy with this ball, getting advertisements, and speaking to unions.

Q. Addressing labor organizations? A. Yes. I was not here, but that is my knowledge of your work.

Q. Well, you know it from *The Blast?* A. Yes.

Q. And from the publication of all that was going on? A. Yes.

Q. Were any copies of *The Blast* issued in New York? A. Two issues.

Q. How many? A. Two issues, May and June.

Q. How many issues, I mean? A. Just the two issues, May and June.

Mr. Content: May and June.
The Court: 1917?
Mr. Berkman: 1917.

Q. And was it your understanding that *The Blast* would continue to be issued here or would be continued in San Francisco where it belonged? A. My understanding was that a few issues would be brought out here in New York, until you had finished your work for the San Francisco prisoners, and then it would be returned, would go back to San Francisco.

Q. In other words, *The Blast* is published in New York just the two issues, and that temporarily? A. Yes, that's right.

Q. With the idea of returning to San Francisco? A. Yes.

Q. Please tell us the character of the *Mother Earth* office, or *The Blast* office—are they independent offices? A. *The Blast* and *Mother Earth* have always been independent, they are not connected in any way.

Q. Independent offices? A. Yes.

Q. They happened to be in the same building? A. They are in the same building.

Q. Can you give us some explanation, perhaps, for the reason that *The Blast* office is in the same building—do you know where my office was in behalf of the San Francisco cases? A. Yes, 20 East 125th Street.

Q. How many rooms are there in the *Mother Earth* offices? A. Two rooms.

Q. How many rooms are occupied with *Mother Earth* work? A. Two rooms.

Q. Were both rooms occupied with the *Mother Earth* work—I am asking about the front room, the office was the back room? A. The front room of *Mother Earth* was the office, and you were using——

Q. What was I using at the time for my San Francisco work? A. You were using the back room of *Mother Earth's* office for your San Francisco work.

Q. And the back room of the *Mother Earth* office was therefore originally used for the San Francisco work? A. Yes.

Q. And then do you remember, when we needed an office for the few issues of *The Blast,* do you remember my calling your attention to the fact that it would be difficult for me to transfer my San Francisco stuff, publications and pamphlets, and that therefore it would be well to try to have the office upstairs. A. There was such conversation, yes.

Q. And, therefore, we rented the office upstairs because I had had another little office in the same building for several months? A. That is correct.

Q. Do a good many people come there to the office of *The Blast?* A. A good many people, yes.

Q. People of various kinds and characters? A. The old, the young, detectives, and newspaper men and——

Q. Do detectives come up there? A. Yes.

Q. And newspaper men? A. Yes.

Q. And other business and professional men? A. Yes, all kinds of people.

Q. Workingmen, and all kinds of people? A. Yes, and professional people.

Q. And the same pamphlets, or the same publications, and the same circulars are handed to all? A. Yes, to all.

Q. Handed to them gratis? A. Yes, to all.

Q. The same publications are freely handed to all? A. Certainly.

Q. Even if a detective should happen, for instance, to come up to *The Blast* office, and we would know he was a detective, would he get a copy of the circulars? A. Yes, if he wanted it or asked for it, and maybe, if he didn't have the money, we would give it to him.

Q. Therefore, it makes no difference who comes up? A. No.

Q. It was given out free to whoever asked for it? A. Yes, that is, our circular matter was given out free. We had some books and pamphlets we sold.

Q. Oh, yes, some things were given away free and some were sold? A. Yes.

Q. The more valuable books, for instance, the valuable books were sold? A. Yes.

Q. And circulars, manifestoes, given away free? A. Yes.

Q. How about *The Blast,* the District Attorney wants to know? A. How do you mean?

Q. Was *The Blast* always sold, or always given away free? A. Well, it was done both—it was sold and also given away freely.

Q. *The Blast* was, therefore, sometimes sold, and sometimes given away free? A. Yes.

Q. If a person would come and state they wanted a copy of *The Blast,* and didn't want to pay any money, or couldn't afford it— A. Why, a copy would be given to him.

Q. Copies were given free? A. Yes.

Q. And those people who came up to the office of *The Blast,* were they all known to us? A. No, they were not all known to us.

Q. Some were known and others were not known? A. Some were known and others were not known.

Q. The Harlem River Casino meeting, that was mentioned here, on what date did that take place? A. On the 18th of May.

The Court: In the evening?

The Witness: In the evening of the 18th of May.

Q. 1917? A. 1917.

Q. The meeting was arranged several days previously? A. The meeting was arranged several days previous to the 18th of May.

Q. Was this before or after the Conscription Bill became a law?

Mr. Content: What, the arrangement, or the meeting?

Mr. Berkman: The arrangement.

A. The arrangement was made before the Conscription Bill had been passed.

Q. Before it was passed? A. Why, certainly. I understand the Conscription Bill was passed on the 18th, and the arrangements for the meeting, of course, would have to take place before the 18th.

Mr. Berkman: That is just what I wanted to bring out.

Q. Did the meeting itself take place before the Conscription Bill was passed, so far as you know? A. So far as I know, the meeting took place before the bill was passed. We knew nothing about it until after the meeting was closed.

Q. When you were at that meeting, did you know anything about the bill being passed? A. I did not.

Q. Do you remember that the first news of the Conscription Bill becoming a law did not come out either until very late in the evening on the 18th, or the next morning the papers—when did you first see it in the papers about the Conscription Bill becoming a law? A. As I remember it, it was after the close of the meeting on May 18th, after the meeting had closed, and we got a paper, and there was some conversation among us about

the bill being passed, but we had no knowledge of it then. That is as I remember the incident.

Q. And you were busy about the speeches, and busy preparing for this meeting on May 18th at the Harlem River Casino, all that afternoon and evening, being up at the hall, and do you remember that when the speakers and a few friends left that hall about eleven o'clock that night, or late in the evening, that was the first time we heard about the bill becoming a law? A. Yes.

Q. Well, so far as you remember the speeches, in the Harlem River Casino, did they refer to the Conscription Bill or the Conscription Law? A. Well, I did not hear the speeches at the Casino. I was guarding the stage door, to keep the soldiers and sailors off the stage. I can't tell you about the speeches.

Q. You were at the stage entrance? A. Yes.

Q. May I ask whether the mass meeting at the Casino was a peaceful meeting, except for the disturbance of the men in uniform? A. It was a peaceful meeting.

Q. So far as the audience was concerned? A. So far as the audience was concerned, it was an enthusiastic and peaceful meeting. The disturbance was caused by the sailors and soldiers.

Q. Was the meeting on May 18th called with reference to conscription, or with regard to registration? A. It was called to discuss the Conscription Bill that was before Congress.

Q. What name did the mass meeting have—how did you refer to it—how was it called in the hand bill? A. I don't remember, I would have to see the hand bill. I think it was called the protest meeting, no-conscription protest meeting, as I remember.

Mr. Berkman: The no-conscription protest meeting?

Mr. Content: That is your best recollection.

The Witness: Yes.

Q. Do you remember whether it was at any time called the no-registration meeting? A. No.

Mr. Content: We don't claim it was. There was no evidence it was.

The Witness: Oh, no.

Q. The meeting was just called the no-conscription meeting? A. Yes, I could not be exact about its terms, its wording, without seeing the hand bill, but it was a protest against the Conscription Bill, I know that.

Mr. Content: There was no claim on the part of the Government that it was called the no-registration meeting. There was no evidence as to that.

Q. But was the word "registration" in that hand bill? A. The word "registration" never appeared in any of our hand bills.

Mr. Content: Are you sure of that?

Q. On the hand bills, did the word "registration" appear in any of our hand bills, announcing the mass meeting in the Casino? A. No.

The Court: The question is in reference to these hand bills announcing the mass meeting.

Mr. Content: May 18th.

The Witness: May 18th had nothing to do with registration.

Q. That was an out and out no-conscription mass meeting? A. Yes.

Q. And what was the heading of the hand bill?

Mr. Content: She has said she could not remember. That was what she said.

A. As I remember that, it was no-conscription protest meeting, May 18th, that is my best recollection.

The Court: He is cross-examining, and he is doing all right, Mr. Content. Her answer can stand.

Q. Then that was the heading, "No-Conscription Protest Meeting"? A. Yes.

The Court (addressing the jury): We will now suspend until five after two. Before you go, let me say this to you, that I know that in newspaper accounts there frequently something slips in that did not take place in the court room. Of course, I know that such accounts will not influence you; but at the same time, I think it is always better when you are engaged in a trial, not to read the accounts of the trial at all. The other day, in some of the papers, there was a reference to a matter which the Court and the District Attorney had not given any information about, so far as the publication was concerned—that might not in any manner, shape nor form come into the case, but I have always found it a very good rule, not to read the accounts of the trial because we in the court room know exactly what took place. It is not that they would influence us at all, but it is upon the theory and feeling that in a criminal trial, I have the same desire as every other Judge, and that is that the jury shall confine their attention solely to the evidence produced in the court room.

(Recess until 2.05 P. M.)

AFTERNOON SESSION.

(2.05 P. M.)

MARY ELEANOR FITZGERALD resumed.

Cross-examination continued by Mr. Berkman.

Q. Miss Fitzgerald, do you remember the meeting on May 9? A. Yes.

Q. An informal meeting? A. An informal gathering, to plan for a protest meeting against the Conscription Bill, and at that meeting it was decided, at that preliminary meeting, to hold a big meeting on May 18th.

Q. Was it anything unusual to hold such informal gatherings at the offices? A. No, not at all.

Q. Do you remember any little gathering on May 10th? A. Yes, there was a little gathering.

Q. Where was that held? A. That was held, that little gathering, in the office of *Mother Earth*.

Q. What was the purpose of that gathering? A. It was a little farewell meeting or gathering of friends of people that were going to Russia the following Saturday and on the following Monday.

Q. It was a frequent plan to have these gatherings and socials? A. Yes.

Q. At the various offices? A. Yes.

Q. Do you remember the meeting of May 16? A. Yes, on May 16 there was another little meeting to prepare for the large meeting of May 18.

Q. What were the preparations made? A. Well, arranging committees for collections, and the ushers, and the sale of literature, etc.

Q. Was the question of conscription discussed at that meeting? A. Not in the evening.

Q. On May 16? A. On May 16, yes, I think it was.

Q. Was the question of registration discussed at that meeting? A. No, the question of registration was not discussed at the meeting of May 16.

Q. What then was the purpose of that meeting? A. The purpose of the May 16 meeting was to plan our committees for taking care of the May 18th meeting.

Q. The mass meeting? A. The mass meeting of May 18th, at the Harlem River Casino.

Q. Do you remember the committee meeting of May 23rd? A. There was a committee meeting, a small gathering, similar to the one on the 16th, that was held on the 23rd, yes.

Q. Where was that meeting called for? A. The meeting of the 23rd was originally called for to be held at the *Mother Earth* office at 20 East 125th Street.

Q. Where was it held—was it held there? A. No, it was not.

Q. Where was it held? A. It was held in the apartment of Miss Goldman.

Q. What was the reason for the change in the office to Miss Goldman's apartment? A. On account of the injury to your foot.

Q. Was Miss Goldman present at that meeting? A. She was not.

Q. Why was she not present? A. She was lecturing in Springfield, Massachusetts.

Q. Was there any word received from Miss Goldman from Springfield for that meeting? A. Yes, I received a letter from Miss Goldman, and in that letter she——

Mr. Content: I object.

Q. One moment, no, that is enough. You received a letter? A. Yes.

Q. What became of that letter? So far as you know, where is that letter now? A. The District Attorney has it, or the Marshal.

Mr. Berkman: May I ask the District Attorney to produce the letter which was sent by Miss Goldman from Springfield to that

meeting, and confiscated by the District Attorney.

Mr. Content: Mr. Berkman, you know perfectly well that your ex-attorney, who is still somewhat your attorney, Mr. Weinberger, asked me this morning for that letter, and I told him it was not necessary to serve a notice to produce, that when Miss Fitzgerald was finished that the Government, or the special agent, would look through everything to find it. You know perfectly well I have not that letter in my pocket. There is a mass of correspondence I have not touched, and this is not proper cross-examination, and has nothing to do with it.

The Court: As soon as she has finished, she may look through those (indicating).

Mr. Content: They are not in the court, they are in the Marshal's room, and I told Mr. Weinberger——

Mr. Berkman: I don't know everything you told Mr. Weinberger.

Mr. Content: No, naturally. It is convenient to have an attorney sometimes, and sometimes not.

The Court: As soon as she is off the stand, she can go with the man Mr. Content referred to, and go through this series of documents that Mr. Content has referred to, and then she can be placed back on the stand at any time for the purpose of asking her any questions in regard to that matter.

Mr. Content: This is not proper cross-examination, anyhow, as to this.

The Court: I understand that.

Mr. Content: I told Mr. Weinberger that he should be furnished with that, that they have ample time before the defense puts in its case. We have nothing to hide.

Mr. Berkman: I want to state that I had no time to talk with Mr. Weinberger to-day.

The Court: That is all right. You shall have the letter if it is in existence.

Q. At that meeting, the committee meeting of May 23rd, that was to be held at the office, and was held at the apartment, because I could not leave, that no-conscription meeting, was the question of registration discussed? A. It was.

Q. What position did your League take with regard to registration?

Mr. Content: Objected to as not proper cross-examination.

The Court: Sustained.

Mr. Berkman: May we ask what was the purpose of that committee meeting on May 23rd?

Mr. Content: The meeting of May 23rd was not covered by the direct examination at all.

The Court: You may reserve that for the defense.

Mr. Berkman: All right.

The Court: The general line is entirely proper, but in your mode of trying the case, it is a little out of order.

Q. How many issues of *The Blast* have been published in New York?

Mr. Content: That has already been answered, she said May and June.

The Court: May and June, 1917?

The Witness: Two.

Q. Where was the May issue published, what printers? A. The May issue was published by the Graphic Press.

Q. The June issue? A. The June issue by the Grayzel Press.

Q. Can you tell us the reason why the June issue was not published at the same place where the May issue was? A. The Graphic Press had a rush of work, and in order to get *The Blast* out by the first of the month, or the first of June, we had to give it to another printer.

Q. And the Grayzel Press is the same printer that prints the *Mother Earth?* A. Yes.

Q. And that last number of *The Blast,* the June issue, was published there? A. The last issue of *The Blast,* the June issue, was published at the Grayzel Press.

Q. Were copies of *The Blast* given to anyone who would ask for them? A. Copies of *The Blast* given to anyone who asked for them and they were also sold, sent out through the mail and distributed around.

Q. And the same about any circulars issued? A. Yes.

Cross-examination by Miss Goldman.

Q. Have you been reading *Mother Earth* for some time? A. I have been reading *Mother Earth* for about nine years, Miss Goldman.

Q. As a subscriber to *Mother Earth,* have you any knowledge when approximately the magazine was mailed to the subscribers each month? A. Yes, about the first of each month.

Q. Do you think that the June number was—that any exception was made with the June number regarding the date, the first of the month or the 2nd? A. Not at all.

Q. The same as the other magazines? A. Yes.

Q. You have not been in New York very long, but nevertheless, I want to ask you whether you have any knowledge how long *Mother Earth* was published by the Grayzel Press, approximately? A. I should say about, from my knowledge of your work, about five or six years.

Q. Will you be good enough to tell whether there was at any time since Mr. Berkman left New York for California, at any time any connection whatever between *The Blast* and *Mother Earth?* A. None at all, none at all.

Q. Can you state whether the nature of *Mother Earth* is distinct from *The Blast?* A. Well, *Mother* Earth, briefly, I am putting it in my own words, takes up more the educational and the economic, and the philosphy of anarchism and modern thought, while *The Blast* is purely a labor paper.

Q. And as a subscriber to *Mother Earth,* of course, may I ask you, *Mother Earth* is a monthly magazine? A. *Mother Earth* is a monthly magazine.

Q. And *The Blast* is what? A. *The Blast* started as a weekly paper, then on account of lack of funds, it was changed to twice a month, and now it is once a month.

Q. Will you be good enough to state why you were asked occasionally to answer mail addressed to me or to *Mother Earth?* A. Yes, your regular stenographer was ill, and I was on vacation, and as a friend to you, I helped you with some of your correspondence and copying your lectures.

Q. Do you remember from previous times, when you were in New York, before you left for California, whether any changes were made during the summer, regarding the stenographers in the office? A. Yes, I know that. When you were away on your lecture trips, the work of the office was lighter, and so you dispensed with your regular stenographer.

Q. And engaged people to help? A. Yes.

Q. How were they engaged? A. Well, they volunteered their services.

Q. I understand. But they were not on full time? A. No, not on full time.

Q. Then, as occasionally letters had to be answered, in a hurry, is it not true that you were

good enough to volunteer to answer them? A. That is the truth of the situation.

Q. Now, it was brought out in the testimony by the prosecution, and you, as a State witness, stated truthfully, that you received lists of *Mother Earth*, that you took the *Mother Earth* list, and other lists, that you found in the *Mother Earth* office? A. Yes.

Q. For the purpose of mailing the no-conscription literature? A. Yes.

Q. May I ask you whether that was an exceptional thing in the custom of *Mother Earth?* A. Not at all.

Q. Or whether it is not a custom with us that if anybody needs to address people for labor purposes, that they are welcome to the lists of *Mother Earth?* A. Yes, that is true.

Q. And would you remember that among the lists that you received—which seemed somewhat to puzzle the District Attorney—that there was also a list known as the birth control list? A. Yes.

Q. Did you not get a birth control list? A. I did.

Q. I wonder if you remember, as far as you can, how the birth control list happened to come into the *Mother Earth* office? Have you any recollection whether, or how—I mean how did *Mother Earth*—how did the birth control list happen to be among our lists? A. People sent in their names to you who were interested in the subject of birth control, and a list was compiled of those names, as I understand it.

Q. Were these lists used in the birth control campaign? Was that given out definitely, whether the list don't date back to that time? A. No, I can't tell you that.

Q. I think you identified your signature on my checks? A. No.

Miss Goldman: Was that brought out?

Mr. Content: No, I asked if she signed as

attorney-in-fact, and she said she had that power.

Q. I would like it, if you have any recollection at all, to tell the Court, and the gentlemen of the jury, approximately when that attorney was given to you, when I gave you a power of attorney to sign my checks—if you have any recollection. A. I think it was the 14th day of May.

The Court: This year?
The Witness: This year.

Q. Are you sure it was May? A. I meant June. I meant the 14th day of June.

Q. Then, up to that time, you never had power of attorney to sign my checks? A. No.

Q. Or *Mother Earth* checks? A. No, up to that time I never had any power to sign your name.

Q. And there was brought out in testimony regarding the meeting of the 18th of May—now have you any recollection—it was not really brought out, and I think in justice to the Court and to the gentlemen of the jury it should be brought out a little clearer as to the time when the May 18th meeting in the Harlem River Casino took place, and whether or not any one of us, or so far as that is concerned, the people of New York, knew definitely that the Draft Law had already been signed by the President.

Mr. Content: She has answered that fully.

By the Court.

Q. What time that evening did that meeting commence? A. Eight o'clock.

Q. And I gathered from what you said before, that it kept up until about eleven, or something of that sort? A. About half past ten, I think, or eleven.

Q. And Miss Goldman and Mr. Berkman were speaking—I mean they were in the hall all that time, weren't they? A. Yes, from about eight o'clock on.

Q. And I suppose you did not go away right after the meeting closed? A. No, not immediately, no.

Q. What time did you get on the street, about, approximately? I rather understood it was about eleven o'clock? A. Something like that, eleven or a few minutes after.

Q. Did somebody buy some newspapers then? A. Yes, some one of the crowd bought a newspaper.

Q. Now, up to that time, to your knowledge, in your presence, had either of the defendants, while you were with them, seen any newspaper or announcement of the passage of the so-called Selective Draft Bill? A. No, not until afterwards.

Miss Goldman: Thank you.

By Miss Goldman.

Q. May I also ask you here, how did Mr. Berkman and myself leave the hall—I mean how did we go to my apartment? A. You took a taxicab.

Q. And why? A. On account of Mr. Berkman's foot——

Q. Did Mr. Berkman have his injury on the 18th? A. He did.

Miss Goldman: That is all that is necessary.

Q. And whether it was not under very great difficulties that he came to the hall? A. It was.

Q. And also, I ask you, and I think it is apropos, how he left the hall? A. In a taxicab.

Q. Miss Fitzgerald, would you please tell us whether, to your knowledge, *Mother Earth,* or I myself, as the publisher of *Mother Earth,* ever had any dealings with the Graphic Press, so far as you know? A. As far as I know, *Mother Earth* or your-

self never had any dealings with the Graphic Press —as far as I know.

Q. As you were secretary and treasurer of the No-Conscription League, will you be good enough to tell whether you had any knowledge of no-conscription money? A. I have knowledge of it.

Q. Of course, I know that as secretary you have that knowledge, that is why I am asking the question.

Mr. Content: She answered. She said she had.

The Court: Of course. That is perfectly proper. Finish the question.

Q. (Continuing) Whether *Mother Earth* had any relations with the no-conscription money. A. It did not.

Q. About the meeting of which you already answered, regarding the 23rd, the preliminary meeting to June 4, the meeting that took place in Hunt's Point Palace, the testimony was given here regarding a meeting at the Hunt's Point Palace on the 4th of June? A. Yes.

Q. Now, can you remember what the purpose of the meeting was to be on June 4th at the Hunt's Point Palace? A. Well, originally the purpose of the meeting for June 4 was a mothers' no-conscription meeting.

Q. A mothers' no-conscription meeting? A. Yes, and we had planned to have it in Madison Square Garden, and have mothers of sons of conscriptable age speak at that meeting; and then there was a question came up that perhaps the men would think it was for women only, and so it was changed to a no-conscription protest meeting. And then we were not allowed to have Madison Square, after it was promised to us, and I secured the Hunt's Point Palace myself, and made the deposits, and all.

Q. Since the hand bill was offered in evidence, announcing the Hunt's Point Palace meeting, as

far as your recollection goes, will you please say who were the speakers at that meeting? A. At the Hunt's Point Palace?

Q. Yes. A. Leonard Abbott was chairman, Leonora O'Reilly was one of the speakers; Louis Fraina, editor of a paper; Emma Goldman; Alexander Berkman; Peter Kane, a young man; and Mrs. Ballantyne.

Q. Well, it is not important to have all of them, because it will come out in a few minutes anyway. Did all of them speak? A. No.

Q. Can you tell us, please, why all the speakers did not speak that evening? A. The meeting was closed earlier on account of the rioting and trouble that was caused by the soldiers and sailors at that meeting.

Q. Can you also remember—if it is permissible—under the circumstances—the circumstances of my speaking?

Miss Goldman: If that is permissible, your Honor, or we can leave it until later.

Mr. Content: I don't object.

The Court: Well, do it now, it is just as easy as any other time.

A. Well, there was trouble caused by the soldiers and sailors in the gallery. There were a few objects thrown down on the stage, broken light bulbs, and so forth, and the meeting was beginning to be an incipient riot—if I may say it that way—and Miss Goldman sprang to the platform and quieted the people. And even the press said if it had not been for Miss Goldman there would have been a riot, and that all the trouble was caused by the soldiers and sailors, absolutely.

Miss Goldman: I think that is all.

Redirect examination by Mr. Content.

Q. Now, I omitted to ask just a couple of questions on the direct examination. There is no question that you did help Miss Goldman in her stenographic work? A. I helped, as I said to you before the Grand Jury, I helped her as a friend, I helped her out with her correspondence.

Q. You were asked this question on the Grand Jury, weren't you: "Q. You are an associate editor of *The Blast?*" And your answered, "A. And I help Miss Goldman in her stenographic work." You made that answer to that question? A. Not altogether, I did not.

Q. Will you say I am reading this just as you answered that question? I asked you this question: "You are an associate editor of *The Blast?*" and you answered, "And I help Miss Goldman in her stenographic work." So that you volunteered that, and I did not lead you? A. I don't remember answering in that way. I mean the truth of the matter is as I have stated; and I am not associated with her, except as a friend, and I help her in her work. That is so.

Q. In other words, you were not employed by her as stenographer? A. No, sir.

Q. But you are a stenographer by profession, a shorthand reporter? A. I am.

Q. I think you said to the Grand Jury that you were also a bookkeeper? A. Yes, I am.

Q. Will you be good enough to tell me how you were paid for the work you did for the No-Conscription League or *The Blast?* A. I never was paid any work for the No-Conscription League, no salaries. No one has been paid for the work done in the No-Conscription League. It is all done voluntarily. If you can understand a group of people working together for a thing that they believe in, and that they love, who will do what is done from the joy of the work, that was true of the work I

did for the No-Conscription League, and they paid me no salary.

Q. And did not you receive, or did not you take something out of the receipts of the No-Conscription League? A. Why, for my expenses, carfare, and things like that.

Q. Personal expenses? A. Something was spent, some money was spent, but not personally, except for expenses like carfare and telegrams, and things like that.

Q. And do you participate in the profits of *The Blast?* A. Well, there are no profits to participate in, Mr. Content.

Q. Didn't you say before the Grand Jury that there was a sort of a division of whatever money you had on hand? A. Well, I said, of course, we have contributions from people interested in the work of *The Blast.* We also have paid subscriptions, our paper is a dollar a year, and we have paid subscriptions. We also have people who are so interested they send contributions, and I told you that when the rent was paid, the printers' bill was paid and if there was something to buy food, then we ate, that is what I said.

Mr. Content: I think that is what you said.

Q. You say there was no connection between *Mother Earth* and *The Blast?* A. There was no connection between *Mother Earth* and *The Blast.* They are absolutely two separate and distinct publications.

Q. Well, I call your attention to this, that the mothers' no-conscription demonstration of June 4th —wasn't that arranged through the channels of *Mother Earth* and *The Blast?* A. No, it was not arranged through them.

Q. I call your attention to this form letter: "Realizing this, we appeal to you for moral and

financial support to enable us to carry on an effective campaign by means of meetings. (A mothers' no-conscription demonstration to take place on the eve of Registration Day, June 4th, has already been arranged.) Manifestoes, and above all, through the channels of *Mother Earth* and *The Blast.*" So that those two publications are referred to in the circular which I show you, Exhibit 4 for Identification. A. Well, *Mother Earth* and *The Blast* each had other articles regarding militarism and conscription, etc., but they were separate and distinct publications, that had nothing to do with each other.

Q. I show you a pamphlet entitled, "Labor and War," and ask whether that was gotten out by the No-Conscription League, or Miss Goldman, or Mr. Berkman?

Mr. Berkman: May the defense take a look at that?

Mr. Content: No.

A. That was not gotten up by the No-Conscription League.

Q. That was not gotten up by the No-Conscription League? A. No.

Q. Did you ever see any of these pamphlets at the headquarters of the No-Conscription League? A. Yes, you got them there, I think.

Q. I say, I asked you did you see any? A. Yes, I have seen the pamphlet.

Q. You say you have seen some around the headquarters of the No-Conscription League? A. Some were sent there. It is usual for different meetings, for organizations, to send their hand bills to all those who are in harmony with the work.

Q. And were you familiar with this proposed meeting of June 23rd—did you know it was to be held on June 23rd, you personally? A. Yes.

Mr. Berkman: The defense admits they called a meeting on June 23rd.

Mr. Content: In Madison Square.

Mr. Berkman: Yes, in Madison Square Garden. The reason I did not speak there was because it was held somewhere else.

Q. But Miss Goldman and Mr. Berkman were scheduled to speak at that meeting of June 23rd? A. They were.

Q. And were some of the hand bills of that meeting given out by the headquarters at 20 East 125th Street? A. I couldn't say whether they were or not. I know some were sent there, and they were on the table when your men came. Your people picked them up and took them out.

Mr. Content: Is Mr. Hagerty in the court? Mr. Hagerty, stand up.

Q. Did you ever see this gentleman in the headquarters of the No-Conscription League? A. Yes, I think I have seen this gentleman.

Q. Do you recall whether or not you gave him a copy of *The Blast* on June 2nd, 1917? A. I don't know whether I gave him a copy on June 2nd. There were several reporters at the office.

Q. That was Saturday? A. At the office on Saturday afternoon, and the June issue had just come from the press; and I gave the reporters copies of *The Blast.*

Q. So that if Mr. Hagerty should say you gave it to him, you would have no reason to doubt it? A. No.

The Court: You say then, if Mr. Hagerty says so, you would not contradict him?

The Witness: No, I do not.

Q. No reason to doubt the man's word? A. No, sir. I couldn't say he was in the office on June 2nd; I know I have seen him, and he has been in the office. If he said June 2nd, I gave it to him, I take his word for it. I gave copies to the reporters that were there that afternoon.

Q. On Saturday afternoon? A. Yes, if he says I did, I take his word for it.

Q. I show you three checks, one of June 12th, one of June 16th, and one of June 18th, signed, the first one by Alexander Berkman, the second one by Alexander Berkman, M. E. Fitzgerald, attorney, and the third the same, Alexander Berkman, by M. E. Fitzgerald, attorney, and ask you did those come from the accounts of Alexander Berkman, about which you previously testified on your direct examination? I mean, did those come from the account in which your no-conscription funds were deposited? A. Well, there was only one account.

Q. Only one Alexander Berkman account? A. Yes.

Q. That was in the Harlem Branch of the Produce Exchange Bank? A. Yes, Produce Exchange Bank, Harlem Branch.

Q. Were those for your expenses, or what do those checks represent? A. The Hotel Brevoort checks.

Q. Were those for your expenses there? A. No, those were for Mr. Berkman.

Q. For Mr. Berkman? A. Those were for Mr. Berkman.

Q. This first check is $46.75, the second $12.95, and the third $17.87. Are you able to state what these three different checks were for? A. Well, for the hotel room.

The Court: What is the answer?

The Witness: The $46.75 was for the Hotel Brevoort; it must be he paid for his room and board. The other two are blank checks, aren't they?

The Court: Checks on blank forms, you mean?

The Witness: These were made on the hotel blank forms. Those were for hotel bills.

Q. Were those for yourself? A. Well, I can't say, one might have been.

Mr. Berkman: May the defense see those checks?

The Court: Yes, show the checks to the defendants. Do you want those marked for identification?

Mr. Content: Yes, after Mr. Berkman has finished with them.

The Witness: I could not say positively until I saw the bills going with them, whether they were hotel bills.

Mr. Content: That is all.

Recross-examination by Mr. Berkman.

Q. What is the reason I was staying in the Brevoort Hotel, so far as you know, if you know? A. Because you were not a resident in New York City, and when you stayed in the city you went to the hotel.

Q. And do you remember my making out checks to pay my bills there? A. I do.

Q. And these checks, can you identify these, or some of them, as some of the checks I paid to the Brevoort Hotel? A. One you wrote yourself. The other two—I paid a bill after you were arrested. There were bills left unpaid at the Brevoort when you were arrested, and those checks correspond to the bills that were left unpaid at the Brevoort when you were arrested, and I paid some of them.

Q. All the bills have been paid by check? A. Yes, I think all the Brevoort Hotel bills were paid by check, yes.

Q. And generally, all the business of *The Blast* was paid by check? A. Yes, except the little bills, something like stamps, and those things, which of course were paid by cash.

Q. But generally the bills were paid by checks? A. Yes.

Q. In what form was money sent to the San Francisco labor unions, was that in the form of check or cash? A. In the form of checks, certified checks.

Q. In certified checks. Now, can you please tell us the bank account of *The Blast,* what does it consist of? A. The bank account of *The Blast* was a bank account in your name, and consists of funds sent to *The Blast* for the purpose of publishing the paper, subscription money, and contributions; and there were labor funds, San Francisco labor fund, and there was a Seattle labor fund, and then the No-Conscription League funds that I endorsed and turned over to expedite matters, to Mr. Berkman's account.

Q. Is there any personal account of mine with *The Blast?* A. No, sir, you have no personal account.

Q. I mean it is in the bank under my personal name? A. Yes.

Q. You said there were how many officers in the No-Conscription League?

The Court: She said two.

Q. Was either of them paid? A. No.

Q. Was anybody paid for doing the work of the No-Conscription League? A. No one was paid for the No-Conscription Work.

Q. How were you, or myself, paid for *The Blast* work? A. Why, when there were certain things needed, and we could have it, we took it from the general funds of *The Blast.*

Q. Did we generally have a note of what, for instance, the expenses for a week or a month were? A. Yes.

Q. And what the necessary expenses would be for the paper itself? A. Yes, what was paid for the paper.

Q. And a note of what the number of subscribers were, and how many already paid for the paper? A. Yes.

Q. The number of subscribers, and how many of them had been paid for, subscribers to the paper? A. Yes.

Q. And the balance, if there was an occasional balance, after the expenses were deducted—were you paid as an employee, or simply as a collaborator? A. No, I was not paid as an employee.

Q. Sharing whatever was left? A. Yes, that is the anarchistic idea.

Q. In other words, we carried out our principles in regard to mutually sharing whatever there was left? A. Yes, we did. I would like to say this, that speaking of the personal account, I did some work for my own account. I did work for the Lyceum, and the Chatauqua, to make a little money for my own expenses, so I had some funds outside of *The Blast*, for that work.

(The check of June 12, 1917, marked Government's Exhibit 20 for Identification.)

(The check of June 16, was marked Government's Exhibit No. 21 for Identification.)

(The check of June 18, was marked Government's Exhibit No. 22 for Identification.)

GEORGE W. BURNHAM, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Content.

Q. What is your occupation? A. Real estate, with Barnett & Company.

Q. Are they real estate brokers? A. Yes.

Q. Where is your place of business? A. 11 East 125th Street.

Q. Were they the brokers or agents for 20 East 125th Street? A. They were the agents.

Q. Do you collect the rents? A. I do, a portion of them.

Q. Do you collect the rents for 20 East 125th Street? A. Yes.

Q. Do you know the defendant, Emma Goldman? A. Yes.

Q. How long have you known Miss Goldman, approximately? A. About a year, probably two years.

Q. Do you know Alexander Berkman? A. No, I have never met him.

Q. You saw him in court. Had you ever seen him before? A. Not that I recall.

Q. To your knowledge? A. Not that I remember.

Q. But you have seen Miss Goldman during the last year, at least? A. Yes.

Q. Now, will you take the second floor of the premises at 20 East 125th Street, one flight up, and tell me by whom those premises are occupied? A. Emma Goldman.

Q. Is she the tenant for that second floor? A. The second floor.

Q. Have you a lease with her? A. No.

Q. What is the arrangement between yourself and Emma Goldman? A. Monthly rental.

Q. So that she is a tenant from month to month —is that correct, as it is called? A. Yes.

Q. How long has she been such a tenant, from month to month, on the second floor of these premises at 20 East 125th Street? A. Two or three years.

Q. Have you collected rents from Miss Goldman here, yourself? A. I have, on several occasions.

Q. You have never, however, met Mr. Berkman? A. No, I never met him.

Q. Will you please tell me whether Miss Goldman occupies the whole second floor? A. She rents the whole second floor.

Q. As a tenant, from month to month? A. Yes.

Q. And at what rental? Do you recall the monthly rental? A. Twenty dollars.

Q. Twenty dollars per month? A. Yes.

Q. Will you tell me who are the tenants of the third floor of the same building? A. Well, the tenant for the third floor, front hallroom, is an old man who has always lived there, his name is J. Michaels.

Q. What is his business? A. He manufactures, I believe sells novelties.

Q. So far as you know, he has nothing to do with Miss Goldman? A. Oh, no.

Q. Who else? A. In the rear room, a party named Kelly. I don't know who he is, because I have never had contact with him.

Q. How long has Kelly been there? A. About three months, I understand.

Q. Prior to Kelly, who was the tenant of the same premises? A. Kerr.

Q. Now, did you ever rent any part of the second floor to Miss Goldman or Mr. Berkman? A. No, the third floor.

The Court: You mean the third floor.
Mr. Content: Yes, the third floor.
The Witness: No, sir.

Q. And so far as you know, only Miss Goldman is the tenant of the second floor of that building? A. Yes.

Q. And that is all she paid rent to you for, the second floor, for which she pays $20 a month? A. Yes.

Mr. Content: That is all.

Cross-examination by Miss Goldman.

Q. Will you be good enough to tell the Court whether you can remember just about how long I have the office from your firm, for *Mother Earth?* A. I could not say, Miss Goldman, because I had nothing to do with it beyond about a year ago—I think it was a year ago.

Q. I see. So that you really were not the gentleman who rented the office to me? A. No, ma'am.

Q. You said you sometimes collected the rents? A. Yes.

Q. Why don't you always collect the rents? A. Well, because sometimes a check was sent by mail, and it was not necessary.

Q. You said that a gentleman by the name of Mr. Kerr had rented the upper rear room of the floor? A. Yes.

Q. Have you any knowledge how long he had the room? A. No, I never had anything to do with that party, because I believe it was always paid by mail.

Q. You have no knowledge about how long he has been there? A. No.

Q. And you have, of course, no knowledge how long ago Mr. Kelly took the room over from Mr. Kerr? A. I think it was about three months ago. I won't be positive. That was the first I heard of it.

Q. Then, so far as you know, I was in charge of the second floor all the time? A. As far as I know.

Q. But you can't remember how long ago it was? A. No, I can't.

Q. It will be three years this October? A. Well, I should judge it was about that time.

Mr. Content: If Miss Goldman says she has been that long, I will concede it.

Q. Now, as far as you know, did your firm ever, do you remember, have trouble with either myself as a tenant, or with *The Blast?* A. Well, I couldn't say we ever had any trouble. There was once a little objection to a sign that was out, but when we spoke to you about it, you removed it shortly afterwards.

Q. But otherwise everything went along smoothly, without any difficulty? A. No difficulties at all.

Miss Goldman: That is all.

Redirect examination by Mr. Content.

Q. Was Miss Goldman a tenant there during May and June of this year? A. Yes.

Cross-examination by Mr. Berkman.

Q. Were you always in the office, Mr. Burnham? A. Not always, I have been for the last year in most of the time.

Q. Well, during the day are you there all the time? A. Most all the time.

Q. Wouldn't it be possible for someone to rent an office there from Mr. Barnett without your being present? A. Yes, it would be possible, but I would be notified of it.

Q. Is your memory for faces very good? A. My memory? No, sir. I can't distinguish people in particular.

Q. You don't remember seeing me—I was on crutches then—coming into your office, and you referred me to a gentleman with glasses who was sitting at the table? A. How long ago was that?

Q. About two months ago? A. I don't remember, though I may have.

Q. Do you remember me asking whether the office there was to be vacated by Mr. Kelly, or Mr. Kerr? A. Well, there was a rear office, I believe there was something about that.

Q. And did you remember somebody asking whether the office would be vacant? A. The rear office, yes.

Q. And it was not absolutely necessary for that person to rent it from you, was it? A. No, not from me, but from Barnett & Company.

AUGUSTUS J. DOYLE, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Content.

Q. Are you an employee of the New York Telephone Company? A. Yes.

Q. And their main office is on Dey Street, New York? A. 15 Dey Street.

Q. What is your occupation—I mean what is the form of your employment? A. Commercial agent.

Q. Is it part of your duty to attend to contracts for telephone service? A. New applications, yes, sir.

Q. For the installation of telephones? A. Yes.

Q. I show you Government's Exhibit No. 11 for Identification, and ask you whether on the lower left hand corner, that is your signature? A. Yes, that is my signature.

Q. Did you take this application for a new installation? A. Yes.

Q. And was it on the date mentioned there? A. That is the date it was accepted, May 12th.

Q. May 12th, 1917, was the date it was accepted? A. Yes.

Q. And do you know Mr. Berkman personally? A. I just know I took that contract from him.

Q. You took this yourself direct from him, this contract? A. Yes.

Q. Did he sign it in your presence? A. Yes.

Q. This is for a telephone at 20 East 125th Street? A. Yes, I think it was the second floor.

Q. And was the telephone installed? A. It was installed about five or six days later, I think.

Q. Did you have any particular conversation with Mr. Berkman at the time you saw him? A. Well, that he had a splendid article, and asked the service to be rushed, and I think we made a special effort to get there; and I got a copy of *The Blast*.

Q. Was that the May or the June issue? A. That was May.

Q. And did he give it to you or did you ask for it? A. Why, I can't recall now, but I might have asked for it. I generally do, to see what it is they publish.

Q. But do you remember what he stated his business to be at that time? A. No, I can't recall that.

Q. How did you know it was a publication? A. Because he asked for listing for *The Blast*, and I asked what it was.

Q. He asked to have *The Blast* listed in the telephone book? A. Yes, sir; and I asked what it was, and he said it was a magazine that they were just publishing, and I asked him has he a copy of it, and he gave it to me.

Q. That was in May, however? A. That was the first week in May, the first or second week in May.

Q. So that the application was to have a listing under his own name, and also under the name of *The Blast?* A. No; just under the name of *The Blast.*

Q. And not in his name, Alexander Berkman? A. No, sir; not under his own name.

Mr. Content: I offer this contract in evidence; this is Government's Exhibit 11 for Identification now.

The Court: It is received.

(Marked Government's Exhibit No. 11 in evidence.)

(Government's Exhibit 11 shown to the jury by Mr. Content.)

Q. Now, I ask you if you produced from the files of the New York Telephone Company, a contract of the subscriber Emma Goldman? A. Yes, that is our regular contract form, as taken out of the contract files.

Q. Taken from your contract files? A. Yes.

Q. I show you Government's Exhibit 12, and ask you is that part of the contract that was produced from your files? A. That is the supplemental contract to the original.

Q. Which is the original? A. The bottom one there (indicating).

Q. That was January 24, 1912? A. Yes.

Q. It is signed Alexander Berkman, if you want to look at it.

Mr. Content: Mr. Berkman concedes that on the original contract of January 24, 1912, his signature is affixed.

Miss Goldman: At that time I believe I was at 55 West 28th Street, New York City.

Mr. Content: Will you concede this was renewed then?

Miss Goldman: Yes.

Mr. Content: Then I will not offer it in evidence.

Mr. Berkman: Miss Goldman concedes the contract was renewed from time to time.

Miss Goldman: Perhaps it needs this little explanation: You see at that time Mr. Reitman was still in the office of *Mother Earth*, and he signed the original contract. Afterwards I continued to sign it.

The Court: That was in 1912.

Mr. Content: The original.

Miss Goldman: Yes.

Q. But the *Mother Earth* 'phone has always been continued? A. Yes, it has.

Cross-examination by Mr. Berkman.

Q. May I ask you whether *The Blast* 'phone is entirely independent of the *Mother Earth* 'phone, on the floor below? A. Yes; in a different location in the building, yes.

Q. And a different number? A. A different number.

Q. Entirely different. And do you remember that I asked you to list me as *The Blast,* in the name of the publication? A. Yes, I do.

The Court: He said that.

Q. Do you remember I asked you wouldn't it be possible to try to put my own name in? A. Your own name?

Q. Yes. A. Why, I don't recall that, but we would list your own name, if you wanted it. I don't recall your asking me that, though.

Q. Do you remember I explained that *The Blast* had moved from San Francisco, a new publication in New York, and was in a hurry? A. I don't know whether you said it was from San Francisco, but I know you said it was a new publication, just starting out.

Q. And that I was anxious to have the 'phone installed so that we could do business? A. Surely.

WALTER POWELL, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Content.

Q. What is your occupation? A. Bookkeeper.

Q. What concern do you work for? A. Walker Engraving Company.

Q. What is their business? A. Photographic engraving.

Q. Do you make electrotypes? A. No.

Q. What do you make, wood cuts? A. We reproduce copies on copper, for our printing office.

Q. Do you know Alexander Berkman? A. By sight, only.

Q. I mean you recognize him there now? A. Yes.

Q. Do you know Miss Emma Goldman? A. No, sir.

Q. Not even by sight? A. No, sir.

Q. You are the bookkeeper for this Walker Engraving Company? A. Yes.

Q. Where is their business? A. 141 East 25th Street.

Q. Is that a corporation? A. A copartnership

Q. Who are the copartners? A. Henry L. Walker and David Epstein.

Q. During the month of May, 1917, do you recall whether the Walker Engraving Company did any work for Alexander Berkman? A. Yes, three orders.

Q. I show you a copy of a cut, "Conscientious Objector", and bearing on it at the bottom the word "Conscription", and I ask you whether that is a copy of a cut made by your concern? A. It is.

Q. And do you recall by whom the order for this engraving contract was given? A. Alexander Berkman.

Q. Then you proceeded to make the cut in accordance with the drawing given to you? A. Yes.

Q. And after the cut was ready, what did you do with the cut—you may use this (indicating) to refresh your recollection? A. The plate was delivered to the Graphic Press.

Q. Did you take the receipt of the Graphic Press for it? A. We did.

Q. What was done with the copy? A. The copy of the proof and the plate was sent to Alexander Berkman.

Mr. Content: I offer Exhibit No. 13 for Identification in evidence. Mr. Berkman, you have already identified the signature.

The Court: Very well. It is received. Does that show when it was done?

Mr. Content: Yes, it is on that sheet.

Q. This top sheet is in effect a receipt, is it, for that? A. That is right.

Q. A receipt for the cut from the printer and a receipt for a copy of the proof from Mr. Berkman? A. Yes.

(Shown to the jury by Mr. Content.)

Q. Now I show you a large copy of the same cut, and ask you whether you made a large cut from the same drawing? A. We did.

Q. At whose order? A. Alexander Berkman.

Q. And does this refresh your recollection when you sent away, and to whom you delivered the original and a copy? A. The original plate was delivered to the Graphic Press, and the proof and copies were delivered to Alexander Berkman.

Q. What date? A. May 10.

Q. 1917? A. 1917.

Mr. Content: I offer Exhibit No. 14 for Identification in evidence.

(Marked Government's Exhibit No. 14 in evidence.)

Q. Now, Mr. Powell, I show you Government's Exhibit No. 15 for Identification, and ask you whether the copy, June 5, "In Memoriam, American Democracy," whether the cut for this copy was made by your concern? A. It was.

Q. At whose order? A. Alexander Berkman's.

Q. Using this to refresh your recollection, what was said at the time the original was delivered, and at the time the copy and proof were delivered? A. The original plate was delivered to the Grayzel Press and the proof and copies were delivered to the *Mother Earth* publication.

Q. Did you have any personal dealings with the *Mother Earth* publication? A. Not during this time.

Q. Well, all your dealings were with Mr. Berkman? A. Alexander Berkman.

Q. You didn't know Miss Goldman? A. No.

Q. She was a customer of yours? A. No.

By the Court.

Q. Was this delivered to you by Mr. Berkman? A. One of his messengers.

By Mr. Content.

Q. It was brought down by messenger? A. Yes.

Mr. Content: I offer Government's Exhibit No. 15 for Identification in evidence.

(Marked Government's Exhibit No. 15 in evidence.)

(Government's Exhibit 15 shown to the jury by Mr. Content.)

Q. Now, I show you a drawing with a man on the back of a soldier, and the phrase, "Free Russia, Maurice Becker, 1917," and ask you whether that was done by you, whether the cut was made, the cut for this drawing was made by your concern? A. It was.

Q. At whose order? A. Alexander Berkman.

Q. Now, using this to refresh your recollection, will you please state what was done with the original and copy of those cuts? A. The original copy, proofs and plates, were delivered to Alexander Berkman.

Q. So that in this case you did not deliver the cuts to the printer, as in the three previous exhibits? A. No, sir.

Q. The original, the copy and the proof, were—all went to a Mr. Berkman? A. All went to Mr. Berkman.

Q. And was there some order first which was delivered to the printer, which was subsequently cancelled? A. The original order was delivered, with his plates, to the Graphic Press.

Q. And that was cancelled? A. That was cancelled.

Q. And you delivered that to Mr. Berkman, all of it? A. Alexander Berkman.

Q. You did? A. Yes.

Mr. Content: I offer Government's Exhibit 16 for Identification in evidence.

(Marked Government's Exhibit No. 16 in evidence.)

(Government's Exhibit No. 16 shown to the jury by Mr. Content.)

Q. Do you recall whether or not your concern was paid for this work? A. Two of those orders were paid for and two of them were not.

Q. Two of them were paid for and two were not? A. Yes.

Q. Were you paid by check or cash? A. By check.

Q. Do you know by whom the check was signed? A. The signature was Alexander Berkman.

Q. You are the bookkeeper? A. Office manager.

Q. And you would know of the receipt of moneys? A. Yes.

Q. And you handle moneys received and paid, and otherwise? A. Yes.

Q. So that but two have been paid by the check of Alexander Berkman, and the other two are still unpaid? A. Yes.

By the Court.

Q. Which two, Mr. Powell? A. The one delivered on May 31st and the other delivered on June 1st.

By Mr. Content.

Q. Were not paid for? A. No.

Q. Those are the last two I showed you? A. Yes.

Q. So that Government's Exhibit No. 15, and Government's Exhibit No. 16, are the ones that were not paid? A. Both unpaid.

By the Court.

Q. The other two were paid for by the check of Berkman? A. Yes.

Cross-examination by Mr. Berkman.

Q. How long have you been working in that place? A. To my knowledge, seven years.

Q. Is it not a fact that your place is known as one of the best in the City? A. Yes.

Q. Do fine work? A. Yes.

Q. Did you have work for me three or four years ago? A. That I can't say.

Q. I mean off and on for the last seven years? A. Yes.

Q. For six or seven years—about six or seven years ago I used to give you *Mother Earth* work, when I was the editor of *Mother Earth*? A. I don't know for whose account the work was received, whether for *Masses* or *Mother Earth*—I can't distinguish between the two.

Q. And you remember you had no work from me during about two years, while I was absent from New York, during 1915 and 1916? A. I can't recall exactly.

Q. You can't tell? A. No.

Q. Don't you know when I returned to New York, I began giving you orders again? A. Of course, I don't know when you came to New York, or when you went. I only remember the orders.

Q. Do you remember whether my custom was to telephone there to Mr. Epstein that I have an order? A. I think it was, yes.

Q. Have you heard Mr. Epstein talking to me on the 'phone? A. I have.

Q. Receiving orders? A. I have.

Q. And then I would send a boy down with the cut? A. That is right.

MARK EPSTEIN, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Content.

Q. What is your occupation? A. With the Graphic Press.

Q. Is that a corporation? A. Yes.

Q. A New York corporation? A. Yes.

Q. Where is its business? A. 53 Cooper Square, New York City.

Q. Are you an officer of the corporation? A. Yes.

Q. Who is the President? A. Mr. Moses Spiegel.

Q. What office do you hold in the corporation? A. Treasurer.

Q. You are one of the officers? A. Yes.

Q. Is that correct? A. Yes.

Q. What is your particular function in the office, I mean what part of the work do you attend to, specially? A. I am in charge, at the head of the pressmen, and also take care of the office.

Q. Do you know Mr. Alexander Berkman? A. Yes.

Q. For how long have you known him? A. Not quite a year.

Q. Have you been employed in the office of the Graphic Press since you knew him? A. Yes.

Q. From the time you first met him you have had your relations at the office of the Graphic Press? A. Yes.

Q. That is, I mean your acquaintance is limited to business relations? A. What?

Q. Never social friends, just business relations? A. No, business relations.

Q. Do you know Miss Emma Goldman? A. I know her by sight. I am not acquainted with her.

Q. Ever have any conversation with her? A. No.

Q. You have spoken with Mr. Berkman? A. Yes.

Q. Has he ever been at your place of business, 53 Cooper Square? A. Yes.

Q. Did you do any work during the months of May and June of this year for the No-Conscription League of No. 20 East 125th Street? A. Yes.

Q. Have you the record to refresh your recollection as to just what exactly you did, what work you did for that league? A. Yes, as per your instructions, I have the journal where I usually enter my orders.

Q. Will you produce it? A. Yes. (Producing same.)

Q. Without looking at that, you cannot tell us the exact dates on which you did work? A. No.

Q. So that would refresh your recollection as to the dates when you did jobs for the No-Conscription League? A. Yes.

Mr. Content: Now, turn to the month of May, 1917. Don't go beyond that.

Q. Will you give us the date of the first piece of work you did in May for the No-Conscription League, or Alexander Berkman, or Emma Goldman? A. On May 10th I printed 15,000 circulars for the No-Conscription League.

Q. Will you look at Government's Exhibit 1 for Identification, and state whether that is the one you refer to as the circular? A. No.

Q. It is not? A. It is not.

Q. Do you know what kind of circulars they were, the order of May 10? A. No, I can't tell you.

Q. What did you call them in your records? A. Manifestoes.

Q. The May 10 circulars were a notice of meeting, something like that? A. I believe it was.

Q. You have no record of them? A. No, sir.

Q. How many, on May 10, did you print, of that circular? A. 15,000.

Q. At whose orders? A. No-Conscription League.

Q. Do you remember how the order first came to your firm? A. Why, I believe it came by telephone, and then the copy was sent down.

Q. And to the best of your belief that was a manuscript for a meeting? A. Yes.

Q. Now, will you turn to your docket, and tell us what the next order was? A. On May 10, 350 tickets.

Q. Presumably for a meeting, I suppose? A. For a meeting.

Q. After that—go ahead. A. May 14.

Q. What was that? A. 7,000 envelopes, No-Conscription League; and 6,000 letterheads.

Q. I show you Government's Exhibit 4 for Identification, and ask you if that letterhead, on which that multigraphing work is written, whether that is the work of the Graphic Press? A. Yes.

Q. How many of these did you print on May 14th? A. Six thousand.

Q. Now, will you please look at this envelope, Government's Exhibit No. 7A for Identification, and state whether that is the envelope that you printed? A. Yes.

Q. That your firm printed for the No-Conscription League? A. Yes.

The Court: 7,000?

The Witness: 7,000.

Q. And six thousand letterheads? A. Yes.

Q. Tell us what appears next on your journal? A. On May 16, 25,000 manifestoes.

Q. Is that what you referred to as the manifesto, Government's Exhibit 1? A. Yes.

Q. And you delivered to Mr. Berkman 25,000 manifestoes? A. On the 16th.

Q. On the 16th of May? A. Yes.

Mr. Content: I offer Exhibit 1 for Identification in evidence.

The Court: Received.

(Marked Government's Exhibit 1 in evidence.)

Mr. Content: I will not read that until the close of this witness's testimony.

Q. Now, give us the next order? A. On May 17, 2,000 circulars.

Q. What were they, do you know? A. I can't tell you.

Q. They were not manifestoes? A. No, all manifestoes were entered as manifestoes.

Q. Now, what comes next? A. On May 23rd, for *The Blast*.

Q. What was that? A. 5,000 letterheads.

Q. Go ahead? A. Also 5,000 for the No-Conscription League.

Q. 5,000 letterheads? A. For *The Blast*, and also for the No-Conscription League, 20,000 subscription blanks.

Q. Do you know whether this letterhead was printed by your firm for *The Blast?* A. Yes.

Q. Is that what you refer to in the testimony? A. Yes.

Q. What date was that given? A. On May 23rd.

Mr. Content: I ask to have these marked for identification.

(Marked Government's Exhibit No. 23 for Identification.)

Q. I show you Government's Exhibit 8-C for Identification, and ask whether those were printed by your firm for the No-Conscription League? A. Yes.

Q. That is what you referred to as the subscription blank? A. Yes.

Mr. Content: That is 8-C for Identification.

Q. What next, Mr. Epstein? A. On the 29th of May.

Q. May 29, 1917? A. For the No-Conscription League, 30,000 circulars.

Q. Do you know whether this exhibit which I show you, this leaflet, which I show you, is the circular to which you refer? A. Well, I printed several, and I can't exactly tell.

Q. This paper was printed by your firm? A. Yes.

Q. That was printed for the No-Conscription League? A. Yes.

Mr. Content: Well, I offer this in evidence. That is the hand bill of the June 4th meeting.

(Marked Government's Exhibit 24 in evidence.)

The Witness: I also printed another the same day, 5,000 subscription blanks.

Q. The same kind that you previously testified about? A. Yes.

Q. You only printed one kind of subscription blanks for them? A. As far as I remember.

Mr. Content: Will the stenographer note that that is similar to 8-B for Identification.

Q. What is the last date you testified about? A. May 29th.

Q. The 29th of June?

The Court: May.

A. Of May.

Q. That is the subscription blank? A. Yes.

Q. Did you do any more work? A. May 31, I sent 3,500 wrappers for magazines.

Q. Were those blank? A. Blank.

Q. Now, you also sell papers, and wrappers, and things of that sort? A. Yes.

Q. So that there was no printing on these wrappers? A. No printing, blank paper.

Q. You just furnshed them to the No-Conscription League? A. No, to *The Blast.*

Q. For whom? A. *The Blast.*

Q. What comes next. That last was May 31. A. That ends up May. On June 4, printed 23 ribbons, printing on silk ribbons.

Q. Printing of committee ribbons? A. Yes.

Q. Was it your recollection that these ribbons had the word "Committee" on? A. Committee, that is all.

Q. After June 4, did you do any other work? A. On June 7, for *The Blast,* 2,000 envelopes.

Q. Were they plain envelopes? A. No, printed, *"The Blast."*

Q. With the name, *"The Blast"* on? A. Yes.

Q. What comes next? A. June 11, 5,000 letterheads.

Q. Were the same type you have previously identified? A. The same.

Q. No-Conscription League letterheads? A. No-Conscription letterheads.

Q. What is next? A. That is all, I think.

Q. So that the last entry was June 11, is that correct? A. Yes.

By Mr. Berkman.

Q. What kind was the June 11 letterhead? A. I believe it was No-Conscription League.

By Mr. Content.

Q. I show you Government's Exhibit 13, and ask you whether that is your signature on the upper part of this receipt? A. Yes.

Q. So that you received that cut for the picture of "Conscientious Objector"? A. I must have received it, because I signed it.

Q. And you recall receiving some sort of a cut

from the Walker Engraving Company? A. I received quite a few cuts from the Walker Engraving Company.

Q. Look at Exhibit 14, and state if you received that? A. I can't recall.

Q. But you previously testified you printed both these different types? A. Yes.

Q. Well, the one is a small engraving, and the other is a larger engraving, or sort of a drawing? A. Sometimes the engraver delivers up the cut, sometimes delivers it to the customer, and it goes with the copy.

Q. Just look and see, isn't that your signature on Government's Exhibit No. 14? A. Yes.

Q. That would show you received it? A. Yes.

Q. So that you have no reason to doubt you received both these cuts from the Walker Engraving Company? A. No, I have no reason to doubt it.

Q. Now, all the printed matter, all written matter, written material, about which you have testified as having been ordered, was that all delivered by you to 20 East 125th Street? A. Yes.

Q. In each instance? A. Yes.

Q. Have you been paid for any of them? A. Yes.

Q. For all of them? A. For all of them.

Q. Do you recall by whom the checks were signed? A. Well, I couldn't tell you exactly.

Q. Do you remember any of them? A. Well, some of them were signed by Berkman, but I could not say they were all signed by him.

Q. But some you are sure of? A. Yes, sir.

Mr. Content: Before Mr. Berkman cross-examines, I would like to read these two exhibits to the jury.

The Court: Very good.

(Read to the jury by Mr. Content.)

Cross-examination by Mr. Berkman.

Q. Mr. Epstein, how long is it since you have received work from me? A. It is about a year, I believe.

Q. You don't know where I was before that? A. Before what.

Q. Before a year ago, I came to you? A. I knew you were in San Francisco.

Q. And since I came to New York, I began giving you work, at your place? A. Yes.

Q. Was the first work I gave you No-Conscription work? A. No.

Q. What was the first work I gave you? A. It was in reference to the San Francisco labor trial.

Q. Was there considerable work? A. Well, it all depends on what you call considerable.

Q. Well, I mean what kind of work, for instance, circulars for mass meetings? A. Posters for mass meetings.

Q. Circulars? A. Some for a ball that was run for that purpose.

Q. For the benefit of the prisoners' appeal? A. Yes, and work of that nature.

Q. Manifestoes in behalf of the San Francisco unions? A. Yes.

Q. Well, I should say rather considerable work, as one indivdual's work goes? A. Yes, considered from my place, I considered it quite some.

Q. Considerable work? A. Yes.

Q. And that was long before—— A. Oh, that was about a year ago.

Q. Well, I mean a whole year before you began receiving any No-Conscription work? A. Yes.

Q. In the last two months you have received No-Conscription work and also *Blast* work? A. Yes.

Q. And the No-Conscription work consisted of circulars and hand bills, you call to mind? A. Yes.

Q. Advertising certain meetings, mass meetings? A. Yes.

Q. Also manifestoes? A. Yes.

Q. Under date of May 10th you had 350 tickets? A. Yes.

Q. What kind of tickets were they? A. If I am not mistaken, they were for a meeting called the, I don't remember how it was, but for the Mooney meeting, connected with San Francisco.

Q. That is the San Francisco matter? A. Yes.

Q. Do you know whether the ticket was in a corrugated little box? A. I think it was.

Q. Sold for the benefit of Tom Mooney? A. I think it was.

Q. For the benefit of Tom Mooney, in San Francisco? A Yes.

Q. That had absolutely nothing to do with the No-Conscription work? A. No.

Q. How many issues of *The Blast* did you publish? A. One.

Q. What month? A. May.

Q. May issue? A. Yes.

Q. When I transferred the June issue to another printer, what was the reason why, on account of which, we could not get it done on the 1st of June? A. I was too busy and could not turn it out in time.

Q. And therefore I had to transfer it to some other place? A. Yes.

Q. You spoke here about the circular for the Hunt's Point Palace meeting—the hand bill advertising the meeting. Do you remember when I first sent the copy for that meeting, that was for Madison Square Garden? A. Yes, I remember that they were.

Q. You remember setting up proof for that Madison Square Garden meeting? A. Yes.

Q. Do you remember my changing it afterwards, notifying you it was not for Madison Square Garden? A. Yes.

Q. And was for Hunt's Point? A. Yes.

Q. Do you remember the original plan for the meeting, the proof you sent, and I changed it? A. I remember that, about the changing.

Q. You have no copy of that proof? A. No, sir.

Q. You remember the hand bill was ordered for a Mothers' Mass Meeting in Madison Square? A. Yes.

Q. And then you submitted proof? A. Yes.

Q. And I changed the wording from "Mothers' Mass Meeting" in Madison Square, to "No-Conscription Mass Meeting," Hunt's Point Palace? A. Yes.

Q. You mentioned that you made, printed 23 ribbons on June 4? A. Yes.

Q. What kind of ribbons, committee? A. Committee ribbons, just the word "Committee."

Q. That is, to be worn on the arm? A. Yes.

Q. Outside of that simply the committee being known? A. Yes.

Q. What was the wording of this committee, just one word? A. The word "Committee."

Q. The one word "Committee"? A. Yes.

Q. You say you did printing for *The Blast* envelopes and *The Blast* letterheads? A. Yes.

Q. Did you understand the reason to be that the addresses had to be changed from San Francisco to New York? A. Yes.

Q. Now, are you not sure all the checks you received from *The Blast* office which were for No-Conscription work, were signed by me?

The Court: Do you remember whether all the checks were signed by the defendant Berkman.

The Witness: My impression is, most of them were. Whenever I happened to look at the signature, I believe it was Alexander Berkman. Sometimes I did not notice it.

Q. Was I the only other person who dealt with you in regard to printed matter for *The Blast* and the No-Conscription matter? A. Yes, I did not know anyone else.

Q. You don't remember of Miss Goldman ever giving you any order for No-Conscription work? A. I never had any orders from Miss Goldman.

Q. I was the only one that gave orders for that work? A. Yes.

Q. Can you think of any checks for No-Conscription work or *Blast* work, that was signed by anybody else, some other name, not my name? A. No, sir; I can't.

Q. Do you know of your place ever doing any work for *Mother Earth?* A. No.

Q. The only work you ever did so far as we are concerned was *The Blast* and the No-Conscription? A. Yes.

Cross-examination by Miss Goldman.

Q. You said, Mr. Epstein, you knew me only by sight—I believe you said that? A. Yes.

Q. Have you at any time in your recollection received any kind of work from myself, or the *Mother Earth* office? A. No.

Q. You have not, have you, at any time, received orders from me for the No-Conscription League, for any kind of printing? A. No.

Q. Or from anyone from the office of *Mother Earth?* A. No.

Q. And, of course, since you have received no orders, have you received any payments? A. No.

WILLIAM CURTIS DEMOREST, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Content.

Q. You are a member of the bar of the State of New York? A. I am.

Q. But you are not practising now? A. No, sir.

Q. You reside at 18 East 94th Street, New York City? A. Yes.

Q. Where is your place of business? A. 217 Broadway.

Q. I show you Government's Exhibit No. 7 for Identification, 7-A, 7-B, and 7-C, and ask you whether you received them through the mails, at your residence? A. I did.

Mr. Content: I offer those in evidence, Government's Exhibit 7, and the inclosures, 7-A, 7-B and 7-C, in evidence. Any objection?

Mr. Berkman: No.

The Court: They are received.

(Received in evidence as Government's Exhibits 7, 7-A, 7-B, 7-C.)

Q. About the same time, did any other member of your family receive similar literature? A. My maid handed, that same day, to me, exactly similar literature, addressed to my wife, at the same time the Government's exhibit was handed to me, from the same mail.

Q. Did you open this exhibit? A. I did.

Q. And you turned it over to me? A. I did.

Q. And your wife received a similar one in the same mail? A. It seemed to me to be absolutely similar.

Q. And to the best of your recollection it was received at the same time, at your joint residence? A. Yes.

Mr. Content: I will show these exhibits to the jury, and will read the letter later (showing exhibits to jury).

Mr. Berkman: No questions.

SIGMUND KANTROWITZ, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Content.

Q. What is your business? A. Printer.

Q. What is the name of your printing establishment? A. The name is the Grayzel Press, Inc.

Q. Is that a New York corporation? A. Yes.

Q. Are you an officer of the corporation? A. Yes.

Q. What officer? A. Secretary and Treasurer.

Q. Where is your place of business? A. 129 Lafayette Street.

Q. Do you know Alexander Berkman? A. Yes.

Q. Do you know Emma Goldman? A. Yes.

Q. How long have you known Berkman? A. About four years, three years and eight months, or six months.

Q. Has he ever been at your place of business? A. Yes.

Q. How long have you known Miss Emma Goldman? A. About three or three and a half years.

Q. A little less than the time you have known Mr. Berkman? A. About the same time.

Q. Has she ever been to your place of business? A. Yes.

Q. So that you know them both to talk to? A. Yes.

Q. During the month of May or June, of this year, did you perform any work for Alexander Berkman or Emma Goldman, or *The Blast*, or the *Mother Earth*—yes or no? A. Yes, sir.

Q. You performed some work? A. Yes.

Q. Now, using these memoranda, which you have given me, to refresh your recollection, will you tell me what work you did for *The Blast* and for *Mother Earth?* A. Well, it was done nearly about the same time. It came in to the office, the *Mother Earth* came in, the copy came on May 28th, and *The Blast* came in on May 29th.

Q. Well, only give the *Mother Earth* first. A. Yes.

Q. You say the copy of *Mother Earth* came in— A. Came on May 28th.

Q. To your office? A. Yes.

Q. Was that what would be known as the June issue of *Mother Earth?* A. Yes.

Q. Tell us what your records show as to the work performed by you for *Mother Earth*—by the way, let me ask you this: You have been printing *Mother Earth* for some time? A. Yes.

Q. For how long? A. Well, I came in this business, it is three years and eight months, when I came in this business, and the *Mother Earth* was printed already in our office when I first came in.

Q. So that you have been ever since this printing *Mother Earth?* A. Four years or more.

Q. It is a monthly magazine? A. Yes.

Q. And a day or so before the 1st of the month you got the copy? A. Yes.

Q. And that is you got the copy in this case on May 28th, 1917? A. Yes.

Q. For the June issue? A. Yes.

Q. Tell us what your records show as to the typing, or anything of that sort? A. We started to set the linotype machine, started to set with the linotype machines on May 28th, and the last day I have got here is June 4.

Q. You did not deliver all of that at once, then? A. No, sir.

Q. To whom did you deliver that when you finished? A. To the bindery.

Q. The book bindery? A. Yes.

Q. What is the name of the binders? A. Buckley & Wood.

Q. Is it your habit to deliver *Mother Earth* to Buckley & Wood? A. I don't know whether we deliver or the bookbinders send after it.

Q. But, when you are ready to deliver, it goes to them? A. Yes.

Q. Before it goes to *Mother Earth?* A. Yes.

Q. They deliver direct to *Mother Earth?* A. Yes.

Q. You do the printing, and then it goes to Buckley & Wood? A. Yes, and they bind it.

Q. Did you send the printed copies of *Mother Earth,* the June issue, at once to the bookbinder, or did it go at different times? A. We sent part on the 2nd and part on the 4th.

Q. And how many did you send on the 2nd? A. I think one-half. I judge one-half, on the 2nd, and half went on the 4th.

Q. About half. Do you know how many you shipped altogether of the June issue of *Mother Earth?* A. Yes, ten thousand.

Q. Is that more than usual, or less? A. It is more than usual.

Q. In other words, it was more than the May issue, for example? A. Yes, it was more, yes.

Q. Now, will you take your memorandum with reference to *The Blast,* and tell us on what date you received the copy of *The Blast?* A. On May 29th.

Q. Had you ever printed *The Blast* before this June issue? A. No, sir.

Q. Tell us the circumstances under which you agreed to print *The Blast?* A. Well, I came in on May 29th—I don't remember what day it was, Thursday or Friday——

Q. May 29th was Tuesday. A. Tuesday morning, and the foreman told me that he has the copy of *The Blast,* and they want that we should print it, *The Blast.* I knew Mr. Berkman was the editor of *The Blast,* so I was a little bit cross, because I didn't like to do it in a hurry, and it was the last days in the month, and it was a new publication, and a new publication we always want more time.

Q. It was a rush job, you mean? A. But, as soon as I saw it was only eight pages, I didn't care so much about it.

Q. Did you speak to Mr. Berkman about it at all? A. And then someone told me Mr. Berkman would call me up, and he did call me up, and asked me could I have it by the following Saturday, and I told him yes.

Q. By the following Saturday—this was Tuesday? A. Yes.

Q. You mean if you could have it done by the next Saturday? A. Yes.

Q. That would be June 2nd? A. Yes, and I said yes.

Q. Then you got the copy of the 29th. Is it your practice to deliver these *Blasts* also to the same firm of bookbinders, Buckley & Wood? A. Yes.

Q. Tell us what your record shows as to the delivery of *The Blast,* as concerned the bookbinders? A. It shows I took it off my press on the 2nd, and the 2nd was the delivery to the bookbinders.

Q. How many copies did you print? A. 10,000.

Q. In all? A. Yes.

Q. And those were all delivered by you to Buckley & Wood? A. Yes.

Q. Now, Mr. Kantrowitz, I show you Government's Exhibit No. 15, and ask you whether that is the cover of *Mother Earth* for the June issue? A. Yes.

Q. That is "June 5, in Memoriam, American Democracy"? A. Yes.

Q. Had you received a cut in this case from the engraver? A. Well, I don't know who received it, but we printed it.

Q. Well, that is signed, "The Grayzel Press," indicating that there is a receipt for the cut from them? A. Yes.

Q. Grayzel Press, Inc.? A. I don't know who signed it. It is signed, but we printed it. Somebody must have received it.

Q. You must have received the cut from someone? A. Yes.

Q. When the job was completed, you delivered it to Buckley & Wood? A. Yes.

Q. As you have indicated? A. Yes.

Q. I show you a volume of *Mother Earth*, June 1917, No. 4, and ask you is that the June issue of *Mother Earth* that you have printed? A. I know from the cover, I would like to look inside.

Q. Look at it: A. I never saw it before, if possible, I know we printed it.

Q. You printed it, not only the cover? A. Sure we printed it.

Q. And delivered it to the bookbinders in this form? A. Yes.

Q. Now, I show you Government's Exhibit 16, and ask you whether that is the cover of *The Blast*, or rather a copy of the cover? A. I don't know, because I did not see *The Blast*.

Q. You never saw *The Blast?* A. Never saw it.

Q. I show you another *Blast*, June volume—— A. If you show me another of *The Blast*, I admit we printed it, because we had this here, June first, the last issue, was printed.

Q. Look and see, is that your June number? A. I cannot recognize it, but I know we have printed it, having the record here, we printed it.

Q. Can't you tell whether it is the work of your press? A. No.

Q. In no way? A. No, the same thing could be printed somewhere else.

By the Court.

Q. Do you know? A. I know this issue was printed by us.

Q. He is not asking you if you know the words of that document. He just wants to know whether you printed that thing there. A. Well, we printed it.

The Court: That is all he asks you.

By Mr. Content.

Q. You don't remember that work? A. No.

Q. You printed the June issue of *The Blast?* A. I printed it, yes.

Q. And you printed the June issue of *Mother Earth?* A. Yes.

Q. And in each case you delivered the paper to Buckley & Wood, the bookbinders? A. Yes.

Q. Have you been paid for the printing of *Mother Earth?* A. I have an account for *Mother Earth;* I have always had an account for them.

Q. Do you think there is still some money due you for the June issue? A. I think so.

Q. How about *The Blast,* have you been paid? A. *The Blast* is paid; there was only one issue, and that is paid.

Q. Do you remember how much you charged for the 10,000 copies? A. Yes, I think that you have a copy of the bill.

Q. You charged for it and you were paid for it? A. Yes.

Mr. Content: I offer these in evidence, *The Blast* of June 1st, and *Mother Earth* of June 1st. Any objection to the offer?

Mr. Berkman: Not at all.

(Marked in evidence, *Mother Earth* as Government's Exhibit No. 25, the June issue; and *The Blast,* Government's Exhibit No. 26, the June issue.)

Mr. Content: I will not read it to the jury at this time, but I would like to read it later on, reserving my right to do so.

The Court: Very good. You can reserve reading these until you get this formal proof out of the way.

Mr. Content: Yes, I would like to let these witnesses get away.

Cross-examination by Mr. Berkman.

Q. Mr. Kantrowitz, you remember my speaking to you about soon after I brought *The Blast* from

San Francisco, speaking to you about my desire to have it printed by you, because I knew your work, and you remarked to me you didn't like to have it taken from the other printer, the Graphic Press? A. For the last issue, you mean?

Q. Yes. A. Yes, I asked you that, when you called me up, and I was a little bit busy, and then it was on Thursday, and you wanted it on Saturday, so I asked why did you take it from the other printer. Yes, I remember that.

Q. You remember my saying he was so busy he could not get it out on time? A. Yes, that is right.

Q. And do you remember my saying you ought to do it for *The Blast,* because that is the regular day for it to appear, on the 1st of the month? A. Yes.

Q. And after you found it was only eight pages, you consented to get it ready on time? A. Yes.

Cross-examination by Miss Goldman.

Q. Mr. Kantrowitz, can you approximately remember how long *Mother Earth* has been with the Grayzel Press? A. Well, I came on the Grayzel Press in November, 1913, and I knew *Mother Earth* was already in the office. Of course that was in November, 1913, and I don't know how long before.

Mr. Content: How long do you say they were printing it?

Miss Goldman: I think it is about 1913. We began early in 1913.

Mr. Content: It is conceded that Miss Goldman first began printing *Mother Earth* in the early part of 1913.

The Court: Well, the witness said before November, 1913.

Miss Goldman: Yes.

Q. Since you have been with the Grayzel Press, can you remember other occasions, other issues,

when *Mother Earth* appeared in a larger issue—I mean more copies than usual? A. Yes, from time to time it was sometimes, issues have been printed twice. That is to say, it was running some time, and usually it was printed, an issue of 4000, and then 3000 reprinted again, and if I am not mistaken, I think one issue was printed 5000, and 5000 reprinted, but I cannot tell you exactly.

Q. Well, then, the fact that the June number was printed in 10,000 copies, would not have been anything unusual to you? A. No, it did not surprise me.

Miss Goldman: Well, that is what I wanted to know.

Q. And has your firm done other printing for me, other work? A. Booklets, whatever you call it, pamphlets, some pamphlets.

Q. Quite a number? A. A few.

Q. At different times? A. Different times.

Q. Well, when you say a few, Mr. Kantrowitz, do you mean a few of the same kind, or different kinds? A. No, different kinds, different kinds at different times.

The Court: A few at different times, a few different times.

The Witness: Yes, a few different times.

Q. Have you printed anything from *Mother Earth*, or myself, any printing for the No-Conscription League? A. No, not from you.

Q. Nothing at all? A. No, not from you.

Q. Just *Mother Earth* and the pamphlets? A. Yes, the pamphlets was before.

Q. And since you have been doing *Mother Earth*, can you tell the Court and gentlemen of the jury approximately the day when *Mother Earth* comes out, that is, about? A. Yes, I think I have got a card from 1916 to date.

Q. No, I beg your pardon, I mean——

The Court: You mean what time of the month?

The Witness: Yes, just a moment, I got a card from January 1, 1916 (reading). February 2nd, 1916, March 4, 1916—this is all 1916—March 31, May 2nd, June 2nd, June 30th, August 1, September 5th, October 4th, November 2nd, December 1—1917: January 3rd, January 31st, February 28th, April 30th.

The Court: How about May and June?

Mr. Content: April 30th was the May issue, and he has testified to the June issue already.

The Court: Yes.

Q. Then do I assume that there is nothing unusual in the June number coming out on the 2nd of June? A. No, it was always about the same thing.

Q. And as far as you know, those who delivered the magazine, as far as you know, of course the magazine is delivered always to the office of *Mother Earth?* A. It is delivered to the bindery, and it goes from our place to the bindery.

Q. You were not with the Grayzel Press when your firm did the binding? A. Yes, I was, and then we sold the bindery. I don't know how it is now, we sold it two years ago, and I don't remember, but our bindery used to do the delivery of everything.

Q. To *Mother Earth?* A. To the *Mother Earth,* yes.

EDWARD C. WOOD, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Content.

Q. What is your business? A. I am a pamphlet binder, pamphlets and periodicals.

Q. What is the name of your bindery? A. Buckley & Wood Company.

Q. A corporation? A. Yes.

Q. A New York corporation? A. Yes.

Q. Are you an officer? A. I am.

Q. What officer? A. President and director.

Q. Where is your place of business? A. 17 to 27 Vandewater Street.

Q. Do you know Emma Goldman? A. Yes.

Q. How long have you known her? A. Ten or twelve years, I think, and probably a little longer.

Q. Do you know Alexander Berkman? A. I do.

Q. How long have you known him? A. A lesser time, some four or five years, probably, or longer.

Q. Have you been the binder of a pamphlet or books known as *Mother Earth?* A. I have.

Q. And for how long has your concern been doing the binding of that monthly publication, *Mother Earth?* A. The binding, a lesser time, probably two or three years.

Q. Without going into that, let me ask you if you bound the June issue of *Mother Earth*—a sample of which I hand you, in Government's Exhibit No. 25? A. We did.

Q. And that was a regular monthly affair of yours, to bind the issue of *Mother Earth?* A. It was.

Q. After you bound it, did you deliver that June issue, some of them, Government's Exhibit 25? A. Some of them.

Q. Have you any record showing just in what parcels deliveries were made, and on what dates? A. I have.

Q. Will you give us the record of the deliveries of *Mother Earth?* A. I have a memorandum here.

Q. Yes, use that to refresh your recollection. A. I delivered on June 2nd, 500 copies.

Q. Of *Mother Earth?* A. Of *Mother Earth.* June 4th, 1500 copies; June 7, 200 copies; June 7, 500 copies; June 11, 500 copies; June 13, 400 copies.

Q. Have you receipts for the deliveries, Mr. Wood? A. I have, in my hand (handing same to Mr. Content).

Q. That is to the *Mother Earth* office? A. Yes.

Mr. Content: Miss Goldman, we would like to offer these, I would like to offer them in evidence if they are all right (indicating).

Q. Now, Mr. Wood, did you also do the binding of the June issue of the publication known as *The Blast?* A. I did.

Q. Was it similar to Government's Exhibit No. 26, which I show you? A. Yes, it was.

Q. At whose request did you do the binding of *The Blast?* A. It came on the order, came from the *Mother Earth* office.

Q. Had you ever bound *The Blast* before? A. No, sir.

Q. Had you ever had anything to do with the publication before? A. No, sir.

Q. So that the June issue was the first one—before we go any further, may I ask whether in the case of *Mother Earth* you received the printed copy to bind from the Grayzel Press? A. Yes, sir.

Q. Was that also true of *The Blast?* A. It was.

Q. That also came from the Grayzel Press? A. Yes.

Q. Have you a record of the deliveries of *The Blast?* A. I have.

Q. Will you give us the dates? A. On June 2nd we delivered 5040 copies, one June 11 we delivered 500 copies.

Q. Is that all? A. We have some on hand.

Q. You still have some on hand? A. Yes.

Q. How many are left, do you know? A. 4500.

Q. That makes it 10,000 in all? A. 10,040.

Mr. Content: I offer these receipts in evidence, in one number, the receipts of *Mother Earth,* showing the delvery of *Mother Earth.*

The Court: Very well.

Mr. Content: Give them one number, bound up together.

(Received in evidence as Government's Exhibit 27, being the receipts of the delivery of *Mother Earth.*)

Mr. Content: I also offer in evidence the receipts of the delivery of *The Blast.*

The Court: That will be No. 28.

(Marked in evidence as Government's Exhibit No. 28.)

Q. Have you any *Mother Earths* on hand, or have they all been delivered? A. I believe we have.

Q. Have you received payment for *The Blast?* A. We have.

Q. In full? A. I can't tell you. We have an open account.

Q. Have you received some payment on account? A. Yes.

Q. How about *Mother Earth,* the June issue? A. The same, we have an open account.

Q. Now, do you recall what truckman delivered the 500 *Mother Earths,* and the 5040 *Blasts,* which your receipts show to have been delivered on June 2nd, 1917? A. We have a hired truckman, I think his name is Monahan.

Cross-examination by Miss Goldman.

Q. You said you have known me about twelve years? A. Yes, I did.

Q. How long have you been handling *Mother Earth*—how long have you been in charge of *Mother*

Earth? A. We have handled it all that time, since I have known you.

Q. And as to the binding, you have—— A. Done that part of the time.

Q. Have you ever before had any difficulties whatever in your business transactions with *Mother Earth* or myself? A. I never had any difficulties.

Q. Have you ever had any difficulties in regard to *Mother Earth,* with the Government? A. Never.

Q. Have you ever done any other kind of work for *Mother Earth,* or myself, than the binding? A. I think we have had—there were pamphlets came through our office, some I think came from you, but I have not seen them myself. We have bound some.

By Mr. Content.

Q. Did you also send a mailing list of *Mother Earth?* A. Yes.

Q. You took charge of the mailing list of *Mother Earth?* A. Yes.

Q. To the subscribers? A. We did.

Cross-examination by Mr. Berkman.

Q. You said you received your order for *The Blast* from the *Mother Earth* office? A. To the best of my knowledge.

Q. How do you mean, by the *Mother Earth* office? Was it reported to you? Who telephoned about it? A. The work came in the usual way, and I suppose it came from the *Mother Earth* office. I wouldn't say positively about it, that it did, other than that the order did, but it naturally would; that was all.

Q. Was it reported to you that I myself telephoned to you, and that you were absent, and that I spoke about a new paper? A. I have no information on that.

Q. When you first heard you had *The Blast,* when you first received the order for printing *The Blast,* after it was accepted by your employees, did they report to you that Mr. Berkman telephoned about

the paper? A. I have no recollection of any report to me of that kind.

Q. They simply took charge—I don't know the name of the young woman who answers the 'phone, but I spoke to a young woman, on the 'phone, and then some other young man, evidently who has charge of the binding there, said they couldn't, because they were too busy, and finally they agreed to do the job. Now, when the job was accepted, you understood it was *The Blast,* not *Mother Earth,* that it was a new job? A. Well, the employees did. I don't think they reported the matter to me. My first recollection of *The Blast* was that I saw some of the copies lying there.

Q. Well, do you know the receipts, the signatures to the receipts for *The Blast,* are signed by Miss Fitzgerald, in *Mother Earth,* the receipts for *The Blast,* while the receipts for *Mother Earth* are signed by other names? A. I have observed that in the receipts, Mr. Berkman.

By Miss Goldman.

Q. I just wanted to ask, having had payment, you received the checks from the *Mother Earth*—can you recall how they were signed, I mean by whom? A. I think, I don't really, I think they were signed by yourself; that is my recollection of it.

JEREMIAH J. MONAHAN, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Content.

Q. What is your business? A. Truckman.

Q. Where is your place of business? A. 396 New Bowery.

Q. You work for Buckley & Wood? A. Yes.

Q. On the 2nd day of June, 1917, did you make any deliveries to 20 East 125th Street? A. Yes.

Q. Do you know what day of the week that was? A. Saturday afternoon, about three o'clock, I believe.

Q. Where did you get the material for delivery? A. Buckley & Wood's bindery, in Vandewater Street.

Q. Where did you deliver that to? A. West 125th Street; the exact number I can't say.

The Court: You mean East 125th Street.

Q. East 125th Street? A. East 125th Street——

Q. What was the name of the addressee? A. The exact number I can't say.

Q. Well, the name to whom you were to deliver it? A. Emma Goldman, I believe, was on the receipt.

Q. Have you got the receipt with you? A. No, sir; I return that to Buckley & Wood.

Q. Who did you see up there; do you recall? A. Miss Goldman, as I recognize in court here, and a young lady who was on the stand, I believe.

Mr. Content: Stand up, Miss Fitzgerald.

Q. Did you see this young lady? A. She signed the receipt.

Q. Was she there at the time? A. I think she signed the receipt, if that is her name.

Q. You think she signed the receipt? A. Yes.

Q. I show you a receipt for 5040 copies of *The Blast,* Government's Exhibit No. 28, signed "M. E. Fitzgerald," and as you—does that refresh your recollection as to who signed the receipt? A. I just said that.

Q. Did Miss Fitzgerald? A. Yes; she signed it.

Q. Did you see Miss Goldman there at that time? A. I think Miss Goldman handed the receipt over to Miss Fitzgerald, if I recall right.

Q. And you think Miss Goldman handed that to Miss Fitzgerald, and that is Miss Fitzgerald's signature on that document? A. Yes.

Q. I show you another receipt, June 2nd, 500, a package of *Mother Earth,* that is also signed by M. E. Fitzgerald. And was the same thing true as to this as to the larger bundle? A. Yes, sir; I had two different sized bundles. Which it was, I couldn't say.

Q. I know, but there were two different sized bundles, and the same procedure was adopted in each case? A. Yes; I judge she handed both receipts to Miss Fitzgerald.

Q. That is your recollection, that Miss Goldman handed both to Miss Fitzgerald, and Miss Fitzgerald signed them and handed them back to you? A. Yes.

Cross-examination by Mr. Berkman.

Q. Do you remember whether you saw me in the office? A. No, sir; I did not.

By Miss Goldman.

Q. Are you very sure you saw me in the office of *Mother Earth?* A. I am almost positive I did.

Q. And do I understand you to say when you brought the package of *Mother Earth*— A. I brought two up at first, and I asked for some help, and you called several young men down from upstairs, and told them to help carry them up, and I brought up two, and they told me not to carry any more, to let them carry up the balance.

Q. And the signature—I did not quite catch your answer—Miss Fitzgerald signed for them? A. Yes.

Q. Where are those slips? A. I turned them over to Buckley & Wood.

Mr. Content: They have already been offered. One was Government's Exhibit 27 and the other Government's Exhibit 28.

HUBERT MOTZ, a witness called on behalf of the Government, was first duly sworn, testified as follows:

Direct examination by Mr. Content.

Q. You are managing director of the Harlem River Park Company? A. Yes.

Q. Is that a corporation? A. Yes.

Q. Is it the owner of the Harlem River Park and Casino? A. Yes.

Q. Where is the Harlem River Park and Casino situated? A. On 127th Street and Second Avenue.

Q. On the 18th day of May, 1917, on that evening, was a public meeting held at that place? A. Yes.

Q. Do you know who made the arrangements for the renting of the auditorium or ballroom? A. Mr. Berkman.

Q. Alexander Berkman? A. Yes.

Q. Did you receive a contract from Mr. Berkman? A. Yes.

Q. I show you Government's Exhibit 2, and ask you whether that is a contract which Mr. Berkman signed? A. Yes.

Q. Did you receive from him a first deposit payment of ten dollars? A. Yes.

Q. When was the balance paid? A. On the 18th of May, before the meeting started.

Q. Before the meeting started up, on the same evening? A. Yes.

Q. A balance of forty dollars was paid? A. Yes.

Q. And by whom was that paid; do you remember? A. By Miss Fitzgerald.

Q. Was that a check or cash? A. By check.

Q. Do you remember now by whom the check was signed? A. I think Mr. Berkman.

Q. By Alexander Berkman? A. Yes.

Q. That is your best recollection? A. Yes.

Q. Did you, upon receipt of the final payment of $40, signed this receipt, marked Government's Exhibit No. 3? A. Yes.

Q. Is that your signature (indicating)? A. Yes.

Q. And did you give it to Miss Fitzgerald? A. Yes.

Q. And the meeting was held on that evening? A. Yes.

Q. Did you see Miss Goldman on that evening? A. Yes.

Q. And Mr. Berkman? A. Yes.

Q. They were both there? A. Yes.

Cross-examination by Mr. Berkman.

Q. You saw me before I made the contract for that meeting on May 18th. Did you see me before that? A. Yes.

Q. What was the occasion on which you saw me? A. Why, you asked if I had the hall open for the night for a mass meeting, either for the 8th or 9th, I think.

Q. I came over to you? A. To my office.

Q. Several days before the mass meeting? A. Yes.

Q. And I asked for the hall? A. Yes.

Q. Did I understand you clearly the purpose of the meeting? A. Yes.

Q. And did I tell you it was a no-conscription meeting? A. Yes.

Q. Did I tell you it was a no-registration meeting? A. No, sir.

Mr. Content: There is no testimony that he did.

The Court: As long as he is here, he might as well ask him.

Q. I took pains to explain to you it was a no-conscription meeting? A. Yes.

Q. And took pains to tell you who would be the speakers? A. Yes.

Q. And was I entirely frank about the matter? A. Yes.

Q. And gave my name as the name of a speaker? A. Yes.

Q. And Miss Goldman's name as a speaker? A. Yes.

Q. And various other men? A. Yes.

Q. Do you remember my asking you do you think the police would stop the meeting? A. I told you I would ask the police.

Mr. Content: What?

The Witness: I told Mr. Berkman to go home, and I will ask the police.

Mr. Content: That is, if you could hold the meeting?

The Witness: Yes.

Q. Did I say that was satisfactory to me? A. Yes.

Q. And I would return; that you should ask the police and explain the character of the meeting? A. Yes.

Q. Say who the speakers would be? A. Yes.

Q. As given by me? A. Yes.

Q. And return and let me know their decision? A. Yes.

Q. And about a day later I telephoned to you, and you did not give me a final decision on it because you could not reach the proper authorities? A. Yes.

Q. And I telephoned to you several times, explaining that we must prepare the hand bills for advertising the meeting? A. Yes.

Q. And what did you say to me finally, Mr. Motz? A. I said—I signed the contract—I said it is all right, and I signed the contract.

Q. You told me it is all right to go ahead with the advertising? A. Yes.

Q. And then I came over to you? A. Yes.

Q. And gave a deposit, and signed the contract? A. Yes.

Q. And it was understood everything is all right? A. Yes.

Q. Now, tell us what was the character of the meeting; was it a nice, orderly meeting, so far as my audience was concerned? A. It was a very peaceful—it was a peaceful meeting.

Q. Was there a little disturbance there? A. Well, some soldiers tried to make some disturbance, but they were stopped.

THOMAS J. MCGEE, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Content.

Q. You are a special agent of the Department of Justice? A. Yes; that is right.

Q. How long have you been such? A. About three years.

Q. Were you present at No. 20 East 125th Street on the day that Alexander Berkman and Emma Goldman were arrested? A. I was.

Q. What date was that; do you recall? A. June 15, I think.

Q. What day of the week was that? A. I think it was a Thursday.

Q. And they were arrested at 20 East 125th Street? A. Yes.

Q. Friday, June 15, 1917? A. Yes.

Q. They were arrested at 20 East 125th Street? A. Yes.

Q. In the afternoon? A. Yes; in the afternoon.

Q. Was the United States Marshal, Mr. McCarthy, down there at the time? A. He was.

Q. Did he perform the arrest? A. He did.

Q. Were you there at the time? A. I was.

Q. Who entered the premises first? A. I think the Marshal.

Q. How close to the Marshal were you in entering? A. Well, there were three of these people intervened; several of these Deputy Marshals were along with him, and I was right behind.

The Court: You entered practically at the same time?

The Witness: Yes.

Q. All in one party? A. Yes.

Q. And Detective Sergeant Barnitz? A. Yes.

Q. And any other special agents? A. Mr. Matthews showed up a short time later.

Q. He did not actually enter at the time the others did? A. No, sir; he did not.

Q. And there were several Deputy Marshals with Marshal McCarthy? A. Yes.

Q. On what floor was Miss Goldman then? A. I guess it would be called the second floor, the first floor above the street.

Q. Who else was on that floor at the time you entered? A. There was a young man whom Marshal McCarthy placed under arrest.

Q. What was his name? A. Bales, I think it was.

Q. Anyone else? A. There was another young gentleman, a young fellow, I don't know what his name was, but he was permitted to go on his way, and requested to step aside while the Government agents performed their duty.

Q. Where was Mr. Berkman? A. He was upstairs, I think it was, I believe the top floor, the third floor.

Q. Did you go up? A. Yes.

Q. Were you there when he was arrested? A. I don't know whether I went up just as he was placed under arrest, but I went in there very shortly after he was.

Q. Who else was in the place? A. I think one representative of the District Attorney's office.

Q. Who; Mr. Stanton? A. Mr. Stanton.

Q. Did you see Miss Fitzgerald at that time? A. I saw Miss Fitzgerald—I think she was in Mr. Berkman's office.

Q. Now, did you have any conversation with either of the defendants, yourself? A. Not any conversation.

Q. At that time did the Marshal, at the time of making the arrests, remove various documents and publications? A. He instructed that they be removed.

Q. And did you—were you present while they were being gathered up? A. I was.

Q. Did you stay with Detective Sergeant Barnitz? A. I did. As a matter of fact, the Marshal instructed I should, to see that the Government's side was protected in every way.

Q. You were there representing the Department of Justice? A. That is right.

Q. Speaking of—I will not note now what was taken out, but you were present when Detective Sergeant Barnitz was gathering whatever he subsequently put together and removed? A. Yes.

Q. Was there anything else that happened at that time, other than the performing of the arrest and the taking of the various publications and documents that were found there? A. With the exception of that check for deposit.

Q. What was that? A. On the Harlem Branch of the New York Produce Exchange.

Q. There was a certain deposit? A. Made out in the name of Emma Goldman, dated June 14, for $2400, that Miss Fitzgerald had in her possession.

Q. You did not take it away from her? A. Oh, I did not; no, sir.

Q. That is all? A. Yes; that is all, with the exception of the bank books, and so forth, we found lying there, that we sent down to the Post Office Building.

Q. Well, the things were taken in a lump, and identified by Sergeant Barnitz? A. Yes.

Q. But you were there while they were being gathered by the representatives of the Department of Justice? A. Absolutely.

Mr. Berkman: No questions.

(Adjourned to July 3, 1917, at 10.30 A. M.)

New York, July 3, 1917, 10.30 A. M.

Trial resumed pursuant to adjournment.

Present:

The Court, counsel and jury, same as before.

LELAND C. SPEERS, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Content.

Q. You are a reporter on the *New York Times?* A. Yes.

Q. Were you such reporter during the months of May and June of this year? A. Yes.

Q. I show you Government's Exhibit No. 8 for Identification, 8-B, 8-A and 8-C, and ask you whether or not you can state whether or not that was received by the city editor of the *New York Times* through the mails? A. Yes.

Q. How can you identify that, so far as the fact is concerned that it was received at the *Times* office? A. Well, by the address on it, and by reading the *Times* stamp.

Q. That is the *Times* stamp, showing it was received on the 31st day of May, in the afternoon—is that right—P. M., at 1.30 P. M.; is that what the arrow points to?

Mr. Berkman: The defense concedes sending these letters.

The Witness: I don't know exactly what that means, 1.30; something like that.

Q. It was delivered between one and two P. M.? A. Yes.

The Court: Fix the date, if you will.

Q. On May 31, 1917? A. Yes.

Q. And it was referred to the city editor—referred by the city editor to you? A. The assistant city editor.

Q. And you turned it over to the Department of Justice? A. Yes.

Mr. Content: I offer in evidence Exhibit 8, Exhibit 8-A, Exhibit 8-B and Exhibit 8-C.

(Received and so marked.)

Cross-examination by Mr. Berkman.

Q. Mr. Speers, please tell us whether it is customary for organizations to notify the newspapers, sending them news items of proposed meetings or any other public activity? A. Yes.

Q. It is? A. Yes.

JAMES A. HAGERTY, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Content.

Q. You are a reporter on the *New York Herald?* A. I am.

Q. And were you a reporter on the *Herald* during the months of May and June of this year? A. I was.

Q. At any time during the last two months did you call at the office of the No-Conscription League, 20 East 125th Street, New York City? A. I did.

Q. Do you recollect what date it was? A. The time that I called there was on the Saturday before registration day; that would be June 2nd.

Q. June 2nd. What time of the day was that that you called there? A. About four o'clock in the afternoon.

Q. Now, will you tell us whom you saw there? A. The first person I saw—there were a number of others in the room, but the first person I talked to was a young man whose name I got, whose name was Saxe Commins; he told me his name.

Q. Anybody else? A. I understood it was Commins; I think it was Commins.

Q. Who else did you see there? A. Why, later I saw a number of others. I first talked with Commins.

Q. Were Miss Goldman and Berkman present at the time you were talking to Mr. Commins? A. Not when I first spoke to him.

Q. You had a conversation with Mr. Commins first? A. Yes.

Q. Do not state what it was, but after you had that conversation with him what happened next? A. Miss Goldman came into the room.

Q. Are you sure it was Miss Goldman whom you see sitting here? A. Yes; I am certain.

Q. What else? Did you have any conversation with her? A. Yes; I had a conversation with her.

Q. Tell us what that was? A. Why, the conversation was not very material. I endeavored to try to find out from Miss Goldman what the No-Conscription League was going to do. She told me what I already knew, that they were going to have a meeting in the Hunt's Point Palace the following Monday night, and I asked Miss Goldman if I could have a copy of *Mother Earth*. She informed me that it had not been obtained from the printers as yet. I think Miss Goldman told me, at any rate.

Q. Let us get that straight. You asked for a copy of *Mother Earth?* A. Yes.

Q. And Miss Goldman told you that they had not yet come from the printer; is that correct? A. Yes; that is crorect.

Q. What else was said, if anything? A. Miss Goldman told me that the *Mother Earth,* copies of the *Mother Earth,* were expected later in the afternoon.

Q. The same afternoon A. The same afternoon.

Q. Did you leave then? A. No; I waited for a while. I did not speak any further with Miss Goldman at that time. I think I went back to a desultory conversation with Mr. Commins and a number of others in the room—nothing of any consequence.

Q. There were a number of people in the room? A. Yes; there were a number of people in the room.

Q. So that there was nothing out of the ordinary in your staying there? A. Oh, no.

Q. What happened then next? A. Some time later some man came in with a number of bundles.

Q. Did you see the expressman who testified in court here yesterday afternoon? A. I did not notice him, not particularly.

Q. You didn't pay any attention to him? A. Paid no attention to him.

Q. But on this same Saturday afternoon, June 2nd, 1917, someone came with a number of bundles; that is correct? A. Yes; that is correct.

Q. Then go ahead. A. At Miss Goldman's direction Mr. Commins brought the bundles over to the table, and Miss Goldman and Mr. Commins opened them.

Q. They opened the bundles? A. Yes.

Q. Did you see what was in them? A. Yes; *Mother Earths.*

Q. You recognize that by this particular cover I hold up, do you (indicating)? A. Yes. Miss Goldman handed me a copy of *Mother Earth,* and I thanked her.

Q. I show you a copy of *Mother Earth* and ask you whether that is a copy that Miss Goldman handed to you? A. Yes; that is.

Q. How do you identify that particular copy? A. I identify the copy by the fact of that article signed by her, which I used in, and which was printed in, the *Times* the following morning, and which I cut out and pasted on my copy.

Q. And later, when I went over the testimony with you, I wrote your name, Hagerty, in there in your presence? A. Yes.

Mr. Content: I offer this copy of *Mother Earth* in evidence.

(Received in evidence as Government's Exhibit No. 29.)

Q. Now, after you received the *Mother Earth,* and thanked Miss Goldman for it, what did you do there further? A. I was just about to leave the room, and on my way to the door, a young woman whom I afterwards learned was Miss Fitzgerald——

Q. The lady who testified here yesterday morning as a witness, Miss M. E. Fitzgerald? A. Yes; she asked me if I did not want a copy of *The Blast,* Mr. Berkman's paper, and I said I did, and she handed me a copy of *The Blast.*

Q. I don't think you gave me that specified copy of *The Blast.* A. I did not have the copy.

Q. Would you recognize the copy you received by looking at the cover? A. Yes.

Q. Is the copy you received similar to this one (indicating)? A. Similar to that one; yes.

The Court: What is the number?

Mr. Content: Government's Exhibit No. 26.

The Court: Very good. Similar to Government's Exhibit No. 26.

Mr. Content: Yes.

Q. Did you make any endeavors to see Mr. Berkman? A. I did when I first went there.

Q. Whom did you speak to about Mr. Berkman? A. I asked Mr. Commins, after I came, told him I would like to see Mr. Berkman, and Mr. Commins said, as I recall it, that Mr. Berkman had been misquoted, and he did not care to see any reporters.

Q. So you did not see Mr. Berkman, but Miss Fitzgerald gave you a copy of his paper? A. Yes.

Q. See if I summarize your testimony correctly: When you first got there the copies of *Mother Earth* had not arrived, and you waited until later, when they arrived, and Miss Goldman, at your request, gave you a copy which has been received, as Government's Exhibit No. 29? A. Yes.

Q. That later Miss Fitzgerald voluntarily gave you a copy of *The Blast,* similar to Government's Exhibit No. 26? A. Yes.

Q. Is that practically all that took place that afternoon? A. Yes; I think so.

Q. You went there in pursuance of your duties as a reporter on the *New York Herald?* A. Yes.

Q. To find out what you could about this so-called No-Conscription League? A. Yes.

Q. That was the only purpose of your visit? A. The only purpose.

Cross-examination by Miss Goldman.

Q. When you came to the office of *Mother Earth* did you ask for a copy of the magazine? A. I did. You mean a copy of *Mother Earth?*

Q. Of *Mother Earth?* A. Yes.

Q. When the magazine was given to you did you pay for it? A. No, ma'am.

Q. It was given to you out of courtesy, for newspaper work? A. Yes, Miss Goldman.

Q. You said that you had a conversation with Miss Goldman? A. I did.

Q. Can you recall what the conversation was about? A. I can't recall clearly, because there was nothing in it that I could use for publication.

Q. Did you broach the subject of registration at all in your conversation with Miss Goldman? A. I think I did.

Q. Did Miss Goldman at any time—or, rather, would you be good enough to tell, as far as you remember, of course, what the conversation about registration was? A. I can only remember that there was nothing, Miss Goldman—I think I can say this properly—that there was nothing Miss Goldman said to me that was in opposition to the law.

Q. May I ask whether you placed in the issue of the *Herald* the entire article, or only quotations? A. I think I used the entire article in quotation marks.

Q. Then, I understand, and did the Court understand, that you were given a copy of *Mother Earth,* at your request, for newspaper purposes? A. That is true.

Q. Is that anything unusual, in your estimation? A. Not at all.

Q. And you, as a newspaper man, may I ask, took the copy of *Mother Earth* given to you for newspaper purposes, to the Department of Justice? A. I did not take it.

Miss Goldman: That is all.

By the Court.

Q. What did happen about that? A. Why, following the publication of the story in the *Herald* an agent of the Department of Justice called upon me, and at his request I gave him that copy.

Cross-examination by Mr. Berkman.

Q. You did not see me in the office of *Mother Earth* on that occasion, did you? A. No, sir.

Q. And when Miss Fitzgerald asked you whether you cared for a copy of *The Blast* she knew you were a reporter on some newspaper? A. She did.

Q. In other words, *The Blast* also was given to you for newspaper purposes? A. Yes.

Q. And when you sent in the article from *Mother Earth,* that particular article, to your paper, you sent the whole article in? A. The whole article from *Mother Earth?*

Q. Yes; that you published in the *Herald.* A. Yes.

Q. And you thought it was all right to publish that article in the *Herald?* A. Well, possibly——

Q. Well, I want to know yes or no.

Mr. Content: He has a right to answer that question in his own way.

The Court: That is a difficult question.

Mr. Content: Answer the question.

The Court: That question is quite indefinite. It would be one thing for a newspaper to publish a fact as a fact. That might or might not be all right, in the sense of meeting or not meeting approval or disapproval, as the case might be. The difficulty with your question is it may involve some question of the character of the article, as I understand it. See if I do not get it.

By the Court.

Q. As you have said, you went there as a reporter, for news? A. Yes.

Q. Now, when you got this copy of the *Mother Earth,* you took this article on the front page and quoted it in the article that you wrote for the *Herald?* A. Yes.

Q. It is the custom, is it not, well known to us all, that newspapers do set forth what facts have occurred? A. Yes.

Q. Irrespective of the merits of the case, good or bad? A. Yes.

Q. And do reports, writings, speeches, and other matters, which have become public facts, by being made known? A. Yes.

Q. And you are aware that on previous occasions that *Mother Earth* or *The Blast* called up the editor, or some reporter, informing them of some mass meeting to be held, for the news? A. Yes; so far as *Mother Earth* is concerned. I don't know anything about *The Blast.*

Q. But *Mother Earth* had repeatedly called you up to the office about various mass meetings which took place? A. I should think so. I know we have had notices from *Mother Earth.*

Redirect examination by Mr. Content.

Q. You did only use, for your story in the *Herald,* the article entitled "The Holiday," by Emma Goldman? A. That is all, from *Mother Earth.*

Q. You did not reprint any excerpts from the article entitled "June 5th," by Saxe Commins? A. No, sir.

Q. You did not print the article "Conscription," by Ben L. Reitman? A. No, sir.

By the Court.

Q. The only thing you did is what you told us? A. Yes.

By Mr. Content.

Q. Just that one article? A. Yes; from *Mother Earth.*

WILLIAM H. RANDOLPH, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Content.

Q. You are connected with the New York City Police Department? A. Yes.

Q. A patrolman? A. Yes.

Q. What is your shield number? A. 241.

Q. Are you also by training a shorthand reporter? A. Shorthand writer; yes.

Q. You report public meetings? A. Yes.

Q. Did you attend the meeting at the Harlem River Park and Casino, 126th Street and 2nd Avenue, New York City, on the evening of May 18th, 1917? A. I did.

Q. Do you recall whether Miss Emma Goldman was a speaker at that meeting? A. I do.

Q. She was or she was not? A. She was.

Q. What time of the day was the meeting held, approximately? A. The meeting started about half-past eight at night.

Q. Did you take stenographic notes of the speech of Miss Emma Goldman on the evening of May 18, 1917? A. I did.

Q. And in taking the stenographic notes did you take them to the best of your knowledge and ability? A. I did.

Q. And have you your original notes of the speech of Miss Goldman, your original stenographic notes of your speech, on May 18, 1917? A. I have.

Q. Will you open to the place in the notes—those minutes are on the first page of this book? A. The first page; yes.

Mr. Content: I ask to have this marked for identification.

(Marked Government's Exhibit No. 30 for Identification.)

Q. How far were you from the point at which Miss Goldman was standing during her speech? A. I was in the balcony, to Miss Goldman's left, I should say about twenty-five or thirty feet away, and up about twenty or thirty feet.

Q. And could you hear her distinctly at all times during her speech? A. Yes.

Q. Miss Goldman has a resonant voice, has she not? A. Yes.

Q. Did you take the notes, the minutes, of Miss Goldman's speech, and take them to your office, and did you make a transcript of your stenographic notes, Government's Exhibit No. 30 for Identification? A. I did.

Q. I ask you to look at this document and state whether or not that is a transcript of your stenographic notes of Miss Goldman's speech of May 18, 1917—that is to say, whether it is a transcript of Government's Exhibit No. 30 for Identification? A. It is.

Q. In transcribing the stenographic notes, Government's Exhibit No. 30 for Identification, did you transcribe them to the best of your knowledge and ability? A. I did.

Q. And do you believe this document which I hold in my hand to be an accurate transcript of your stenographic notes, Government's Exhibit No. 30 for Identification? A. It is.

Mr. Content: Well, I offer this in evidence.

(Transcript received in evidence as Government's Exhibit No. 31.)

(Government's Exhibit No. 31 was read to the jury by Mr. Content.)

Mr. Content: Now, your Honor, I would like to offer in evidence three form letters, Exhibits 4, 5 and 6 for Identification, that Miss Fitzgerald identified as form letters that were sent out, and which the defendants saw.

The Court: Very good.

Mr. Content: And which I inadvertently omitted to offer in evidence at the time.

The Court: Well, they are in evidence.

Mr. Content: Exhibits 4, 5 and 6 for Identification, in evidence.

(Marked in evidence Government's Exhibits 4, 5 and 6.)

By the Court.

Q. Have you any idea how many people were at that meeting, Mr. Randolph? A. Why, I cannot judge the number, but the hall was very crowded; in fact, it was congested.

Q. Would you say there were several thousands? A. I cannot judge the number. It was very crowded.

Q. A crowded hall? A. Very crowded.

Q. Have you any idea of the dimensions of the hall? A. No; I have not.

Cross-examination by Miss Goldman.

Q. Mr. Randolph, how long have you been a public stenographer? A. I have been a policeman; I have not been a public stenographer.

Q. How long have you been doing public stenography? A. I don't understand the question. I do not think I have been doing any public stenography.

Mr. Content: Well, police stenographer.

The Witness: Police stenographer; why, ever since I have been in the Police Department.

The Court: How long is that?

The Witness: Five years and eight months, off and on.

By the Court.

Q. Well, the point is, before you became a policeman, were you a shorthand writer? A. Yes.

Q. How long had you been a shorthand writer? A. About five years.

Q. Before you became a policeman? A. Yes.

Q. So that you have been a shorthand writer about nine years? A. Or more.

Q. Nine years or more? A. Yes.

Q. And did you learn shorthand writing in any school? A. I did.

Q. Where? A. In the day high school, the De Witt Clinton High School, and after that I took it up at the evening high school, and graduated from there in stenography.

Q. Before you became a policeman were you employed as a stenographer? A. Yes.

Q. Where? A. With the Brooklyn Navy Yard.

Q. How long were you there? A. About five years.

Q. And from there did you take the examination and become a policeman? A. I did. I have also taken three examinations, three civil service examinations, municipal civil service examinations, in this city, for the position of stenographer, and qualified in all three.

By Miss Goldman.

Q. Will you please, Mr. Randolph, tell us how many words a minute you can take? A. Why, I can't say at the present time how fast I can write.

Q. Approximately? A. Well, between 125 and 150 words.

Q. You can take that easy? A. Well, it all depends on the matter.

Q. On the matter? A. On the subject-matter; yes.

Q. Up to the meeting at the Harlem River Casino on the 18th of May, were you in the habit of taking down speeches delivered on platforms? A. Yes.

Q. Speeches and lectures? A. Yes.

Q. How long have you practised in that line? A. Why, ever since I am in the Police Department.

Q. And you can take 125 or 150 words a minute? A. According to the subject-matter; yes.

Q. Now, the subject-matter in the Harlem River Casino, was that an easy matter to you, or was it rather novel, new material? A. It was ordinary matter; I considered it ordinary matter.

Q. You have taken such before? A. Before.

Q. Speeches before? A. Yes.

Q. Do you—when you got to the Harlem River Casino, Mr. Randolph, did you see me there? A. I did.

Q. Did you speak to me? A. I did not.

Q. You did not ask to be shown to a box? A. I did not.

Q. You are sure of that? A. Positive.

Q. Have you any knowledge of any other stenographer representing the Government having been there?

The Court: You better say the Police Department or the Government.

Q. The Police Department; I beg your pardon. A. No; I have no knowledge of any other stenographer being there.

Q. Well, how did you happen to get in a box? You say you were in a box when you took the notes. A. I was not in a box; I was up in the balcony, in the rear of the boxes.

Q. Can you tell us whether the boxes are on the balcony? A. Yes; they are.

Q. How did you get to that balcony? A. Why, I walked upstairs, the same as everybody else was doing.

Q. Everybody else was walking upstairs without having an admission to a box seat?

Mr. Content: He said he didn't have a box seat.

A. I will explain, Miss Goldman.

Q. Please. A. When the crowds first came in, when the people first came in, there was an admission of fifty cents charged for the box seats in the balcony, and at that time I did not go into the balcony, I was on the main floor, on the left-hand side, about the center of the hall, on the side—on the right-hand side, I should say—and about nine o'clock, or a quarter after nine—it may have been half-past nine—I went upstairs to the balcony, as I saw all the other people going upstairs. There was no longer any admission charged at that time, and there was nobody at the stairs collecting tickets, or charging admission to the balcony seats.

The Court: When you went up?
The Witness: When I went up.

Q. And do you remember quite distinctly that you did not see me when you came to the hall? A. I didn't come to see you, but I was standing right alongside your when I bought a copy of *Mother Earth* and a book entitled "Anarchism," by you. You were standing at the table when I bought those books.

Q. You also remember quite distinctly that you did not ask me to be permitted in a box, as you represented the Police Department? A. I never spoke to you, Miss Goldman, that night or any other night. I have never spoken to you until now.

By the Court.

Q. As I recollect, your testimony was that you were about twenty-five or thirty feet away from where Miss Goldman was talking? A. Yes; I was in the balcony, to her left.

Q. There is no doubt she was below you, on the platform? A. Below, on the stage platform.

Q. Could you hear her distinctly? A. Yes; except at times, when the people in the balcony were either coming in or going out, or conversing, and there was

some times it was not very clear, but to the best of my ability I took everything I heard her say.

The Court: I see. Now, what did you do, transcribe this Government's Exhibit 31?

A. I did.

Q. I mean, that is your own work? A. That is my own work.

Q. How soon after you took the minutes did you do that? A. That was on—may I refer to my memorandum book?

Q. Yes; certainly. That is, I understand this meeting was on Saturday night, wasn't it?

Miss Goldman: It was a Friday night.

The Court: Friday; yes.

The Witness: Friday night.

Q. Now, you have a memorandum here that Miss Goldman finished at ten-fifteen? A. Yes.

Q. When was it you transcribed your stenographic minutes? A. On May 21st.

Q. That would be three days later? A. Yes, sir.

Q. This meeting was on May 18? A. Yes.

Q. And where did you do the transcribing? A At home.

Q. At your house? A. Yes.

Q. You have a machine there? A. I have a machine there.

Q. A typewriting machine? A. Yes.

Q. And are you confident that the contents of the transcribed copy, Government's Exhibit No. 31, agrees with your shorthand notes? A. Yes.

Q. You are sure of that? A. Yes.

Cross-examination by Mr. Berkman.

Q. Were you at that meeting, on May 18th, as a representative of the Police Department? A. I was.

Q. You used to be a policeman? A. I am.

The Court: He is.

Q. Oh, you are a policeman now?

Mr. Content: Yes; he gave his shield number, and said he was a patrolman.

The Court: The testimony is he has been a policeman for five years and eight months, and before that time he was a stenographer for several years, and employed in the Brooklyn Navy Yard, and from there he took his examination and became an officer, and he is utilized by the department to go around and take stenographic notes at public meetings, to which he is assigned. Is that correct?

The Witness: That is right, and I have also taken three city examinations, and qualified in all three.

Q. As a member of the police force you are aware that the defendants have been criticizing the police on the platform or in their writings—are you aware of that? You have heard that? A. Yes.

Q. You know that? A. Yes.

Q. And as a member of the police force that has thus been criticized are you not somewhat prejudiced against these defendants? A. Not at all.

Q. Absolutely not? A. No, sir.

Q. Now, you say you were taking notes back of the boxes, up in the gallery? A. Yes, sir.

Q. You stated that it was a very crowded meeting? A. Very crowded.

Q. Do you know that that is a very large hall? A. Yes.

Q. And do you know it would hold at least between five and seven thousand people? A. I don't know how many it would hold.

Q. As a man who has often attended mass meetings, would you say that this particular hall, Harlem River Casino, is regarded in New York as one of the largest halls? A. Yes; I know that.

Q. And in a large hall, very much crowded, there is usually considerable of whispering and talking going on? A. Yes.

Q. And you were quite a distance away from the platform—thirty-five feet?

The Court: He said twenty-five feet.

Q. About twenty-five feet?

The Court: Twenty to twenty-five feet, he said.

Mr. Berkman: Yes.

The Witness: Yes.

Q. And you were in the back of the gallery, back of the boxes? A. Yes.

Q. Was the gallery crowded? A. Yes.

Q. A great many people were in front of you? A. Yes.

Q. You could not see the speakers very clearly and distinctly? A. I could. I was standing on a table, and as a lot of other people were doing.

Q. Standing on a table? A. A lot of other people were standing on chairs and tables all over the hall.

Q. In the gallery back of the boxes? A. In the balcony back of the boxes.

Q. Are you sure there were tables back of the boxes? A. Yes; I was standing on one of them, I know.

Q. Back of the boxes? A. Yes.

Q. On a table? A. At that time there were tables, that night.

Q. Standing on the table there, you were not very comfortable, were you? A. Not very; no.

Q. Are you sure that in that condition you could take down very faithfully everything that was said? A. Yes.

Q. You were not very comfortable? A. Well, I was comfortable enough to be on the table, standing away from the other people.

Q. You had no table to write on, or any desk? A. No, sir.

Q. And you mean to say you took down everything exactly? A. Yes; what I heard and understood.

Q. Isn't it customary——

The Court: He said everything he heard and understood, except the name he could not get.

Mr. Content: Madam Breshkovska.

Mr. Berkman: Yes.

The Court: Yes; and a few names of a few Senators he couldn't get.

Q. Some sentence you missed? A. Yes.

Mr. Content: That is all indicated here.

Q. Would it be possible for you to misunderstand certain words and write them down differently? A. Hardly; although I might have misunderstood one or two words, or something of that kind.

Q. You might have misunderstood one or two words? A. I might have; yes.

Q. Before the meeting on May 18, when was the last time you attended a similar meeting?

The Court: Well, you mean a mass meeting?

Mr. Berkman: Of that character, a socialist, or no-conscription or anarchist mass meeting.

The Witness: Why, about two or three weeks before.

Q. Two or three weeks before? A. Yes.

Q. What was the character of that meeting? A. I think it was of the same nature.

Q. You think it was of the same nature? A. Yes.

Q. Who was the manager of that meeting; do you know? A. I don't know.

By the Court.

Q. Where was it? A. It was in 4th or 5th Street.

Q. In a hall? A. Yes.

By Mr. Content.

Q. On the East Side? A. East Side; I think it is No. 85 Fourth Street.

By Mr. Berkman.

Q. English-speaking? A. Yes—no, sir.

Q. You attended a meeting on Fourth Street which was not an English-speaking meeting? A. Yes.

Q. Do you understand any other languages outside of English? A. Yes.

Q. What particular language? A. German.

Q. Were there any German speakers at that hall? A. No, sir.

Q. Did you understand any of the speeches made at that meeting? A. I would not say I did; no.

Q. Then, it is not important that you attended a meeting that you did not understand?

Mr. Content: That is not the question. That is important. You asked what was the last meeting of that kind he attended, and he answers you.

Mr. Berkman: Perhaps I did not express myself right.

Q. What was the last meeting you attended of that nature, where you took stenographic notes?

The Court: What was the last meeting of a socialist or an anarchist character, or no-conscription meeting, prior to this time, in the Harlem River Casino, at which you took notes?

The Witness: I think that was the last one, in Fourth Street.

By Mr. Content.

Q. But you did not take notes at that meeting? A. I did not take notes there.

Q. What was the last meeting you reported stenographically? A. I don't just remember, just now. I don't remember.

By Mr. Berkman.

Q. Approximately a month before, or five years? A. I can't remember.

Q. But you don't remember whether or not within the last five years you attended a similar meeting, at least once or twice? A. Oh, yes; I have attended different——

Q. I mean taking stenographic notes? A. I have attended different meetings, but I don't remember just when I attended the one before May 18th, outside of the one down in Fourth Street.

By the Court.

Q. Give us some meeting you attended—that is what he is after—where you made notes, if your memory serves you. Have you got any memoranda, or anything— A. I can't just remember of any now; no, sir.

By Mr. Berkman.

Q. If you had attended a meeting of that character within recent times, before the 18th, wouldn't you remember it, that you had taken stenographic notes? A. Why, I have attended so many meetings I can't remember them all. I don't always take—I take notes, but don't always transcribe them unless they are of a nature that are wanted.

Q. But I mean at what meeting did you take stenographic notes before May 18th? I ask if you can remember one particular meeting that you took stenographic notes at before May 18th? A. No; I don't remember.

Q. It is very likely that within the last six months you have not attended any meeting of this character and took stenographic notes? A. I think I have, but I can't remember.

Q. You are not sure? A. I am not sure; no.

Q. How many meetings of this character do you think you attended and took stenographic notes at within the last year, approximately? A. I have attended quite a few, but I don't know how many.

Q. I mean of this character?

Mr. Content: What do you mean by "of this character"?

Mr. Berkman: Socialist, no-conscription or anarchistic.

Mr. Content: He could not have been at any no-conscription meetings.

The Court: You mean there were not any no-conscription meetings as far back as a year ago.

Q. Or any socialist or anarchist meeting? A. I have attended quite a few, but I don't remember how many I have attended.

Q. Did you take stenographic notes at those? A. In some I did.

Q. In some? A. Yes.

Q. And you cannot state any meeting that you took stenographic notes at, outside of the meeting then, on the 18th? A. No, sir.

Q. Is it not a fact that conscription and registration are new forms, that you have not heard these terms two years ago or a year ago? A. Yes; they are new.

Q. They are new things? A. Yes.

Q. Isn't it very likely that public speeches made about conscription would involve new words, and new terms? A. I don't think so; no, sir.

Q. You don't think talking about a new matter, a new subject, would involve a new term or a new expression? A. I do not consider that new matter.

Q. That is not new matter? A. No, sir.

Q. You have always had conscription in this country? A. No; I don't mean that, but I mean the general subject-matter is not new.

Q. Was conscription ever discussed in this country, except in recent months? A. No. I don't know; I think it may have, in connection with England, it may have been.

Q. I am speaking about this country.

Mr. Content: A word is a word. What is the difference whether it was discussed in Australia or Ireland?

By the Court.

Q. Well, of all those things that were read as your transcribed minutes was there any word, outside of the word conscription, that was in any sense, from your point of view, a new word? A. No, sir.

Q. Now, registration; you have heard that word in connection with the elections? A. Yes.

Q. Violence is not a new word, is it? A. No, sir.

Q. When you get off the stand will you find in your minutes the word "register," the word "conscription" and the word "violence" in your original minutes? A. Yes.

The Court: And you just show those three words to the stenographer.

Mr. Content: Let him show them to the official stenographer of the court.

The Court: You will show those words to the official stenographer of the court, and you can show also those words to the stenographer who is acting for the defendants.

The Witness: Yes.

Q. Can you look through the minutes of this quickly now? A. I think so; yes.

Mr. Content: I may read to the jury while he is doing that, if it will save time.

The Court: All right.

Mr. Content: This is Government's Exhibit No. 8, 8-A, 8-B and 8-C, the letter re-

ceived by the city editor of the *Times*. I will not read the letter, because it is the same as the letter that Mr. Demorest received, but the subscription blank was not in it, was not in Mr. Demorest's letter; he had a notice of the June 4th meeting; that is not in this letter, and 8-A is the same manifesto already read to you (reading subscription blank).

Mr. Content: Now, this letter (indicating), this was inadvertently not marked in evidence. That is the same kind as that letter.

The Court: Let it be marked in evidence.

Mr. Content: It will be 9 for Identification, marked in evidence.

(Marked in evidence as Government's Exhibit 9.)

Mr. Content: This is the letter addressed to Clarence Lyman Collins, at the Ansonia, and is the same form letter of May 25, the same subscription blank, and the same manifesto, and the announcement of the June 4th meeting at Hunt's Point.

I offer in evidence also Government's Exhibit 10 for Identification. That is a similar letter, which Miss Goldman signed, and which bears her name, and ask to have them marked in evidence.

(Marked in evidence as Government's Exhibit 10, 10-A, 10-B and 10-C.)

Mr. Content: This is the same form letter (indicating), and this is the rubber stamp, "Emma Goldman," exactly the same letter, and the same hand bills, the same contribution blank, and the same circular, sent to Frank Harrison, Denver, Colorado. The letter was returned to the sender, because he was not at that address, but it was postmarked New York, and deposited in the mails May 25th, 1917, at Station L.

Now, these are Exhibits 5, another form letter, on the same letterhead, undated, but Miss Fitzgerald said she believed that this came between the one I have already read, "A," of May 25, and June 7th (reading same).

This is Exhibit 6, being another form letter of June 7 on the same letterheads (reading same).

(Examination of Mr. Randolph's stenographic minutes by the official stenographer and the stenographer for the defendants.)

Mr. Content: This is Exhibit 25; I will not read it all. I will read just such parts as I want, and the other side can read what they want of it afterwards.

(Reading from Exhibit 25, copy of *Mother Earth,* by Mr. Content.)

Mr. Content: I also call the jury's attention to the back page, being the announcement of the no-conscription mass meeting of June 4th, with the words, "On the Eve of Registration, Hunt's Point Palace; speakers, Emma Goldman and Alexander Berkman," the same as the hand bills I read to the jury.

By the Court.

Q. Now, Mr. Randolph, while the United States Attorney was reading those exhibits to the jury, did you show the words that I spoke of, namely, "register," "conscription" and "violence" to the official stenographer, Mr. Hawthorne, and to the stenographer for the defendants, Mr. Munter? A. I did.

Q. And you exhibited those certain portions of your stenographic notes in which those words appear to the official stenographer and Mr. Munter as well? A. I did.

Q. Now, what is your stenographic system or school? A. Isaac Pitman shorthand.

Q. Now, in your Isaac Pitman shorthand—that is a very old-established stenographic system? A. Yes.

Q. Now, in your method of taking stenographic notes you follow the Pitman system, or do you have signs of your own? A. I follow the Pitman system.

Q. You have no signs of your own? A. No, sir.

Q. So that any person familiar with the Pitman system can read your notes? A. Yes.

Q. And when you are assigned to a meeting, when you go to a meeting like that of the Harlem River Casino, is it a fact that you are assigned there by some superior officer in the department? A. Yes.

Q. And it then becomes your duty to go to the place assigned and take the speakers? A. Yes.

Q. Now, sometimes, I gather from what you say, you transcribe them, and sometimes not? A. Yes.

Q. And obviously you transmit them always, when you are so ordered, to your superiors? A. That is correct; yes.

Q. And is it correct that owing to your being a stenographer you are utilized from time to time by the Department of Police to attend the various kinds of meetings, all different sorts of meetings, for the purpose of taking the words there uttered? A. Yes.

Q. Now, you said that your speed depended upon the subject-matter? A. Yes.

Q. Do you mean by that that if you had to attend some meeting where technical terms were used, in science, for instance, that it would not be as easy to take your minutes as it would be where the words of ordinary significance were used? A. That is correct, and also in the case of Miss Goldman speaking; I judge she spoke at the rate of about one hundred words a minute. She might have exceeded that at times and spoke at a rate of one hundred and twenty-five words a minute. She had to speak kind of loud, and naturally she spoke somewhat slower in order to be heard.

Q. Now, except at that meeting, for those names of persons like the names of Senators, or the same of this Russian, which was referred to, and the occasional noise around you, except those instances, did you have any difficulty in taking what was said? A. No, sir.

Q. No difficulty at all? A. No, sir.

By Mr. Berkman.

Q. Have you ever been assigned to very important meetings, like conventions, or such, which require experts? A. No, sir.

Q. Have you a reputation as an expert stenographer? A. No, sir.

Q. What is the average of your writing? A. About 100 or 125 a minute.

Q. And you say Miss Goldman speaks at the rate of about one hundred?

The Court: He said at one hundred. She spoke, I understood him, generally at the rate of one hundred words a minute, because there was a big crowd, and she spoke distinctly and slowly. Is that correct?

The Witness: Yes.

Q. You are not aware that Miss Goldman occasionally uses Russian names, or refers to Russians, that you might not understand—or, I will put it differently—were there Russian names mentioned you did not understand? A. Yes.

Q. What was the reason you did not take down the names of the Congressmen mentioned?

Mr. Content: Senators.

Q. Senators and Congressmen. A. I did not understand the names.

Q. You did not understand the names of the Congressmen and Senators? A. No, sir.

Q. You also said that Miss Goldman spoke very distinctly, loud and slowly? A. Yes.

Q. And that you did not understand the names of the American Congressmen?

The Court: No; American Senators.

Mr. Berkman: Or Senators.

A. No, sir.

The Court: Are the names you spoke of American names?

Mr. Content: LaFollette is not an American name.

The Court: LaFollette is not an ordinary name.

Q. Would you be able to understand the name, a name like LaFollette, and be able to write it down quickly? A. If I heard it distinctly; yes.

Q. I mean are you sufficiently familiar with public questions to be able to understand the literature without the language of the layman—and social questions?

Mr. Content: No; that has not a thing to do with it.

The Court: That is too hypothetical.

Mr. Content: I want to call the Court's attention to the fact that where he could not get the Russian names he put a couple of letters, and could not finish it.

Q. You know Senator LaFollette plays quite an important role in this country, so that you see his name quite often in the papers? A. Yes.

Q. And the names of Senators would not give you any difficulty, so far as that is concerned A. Well, it all depends on how well I understand the name when it is spoken. If it was a name I was familiar with it would be easier to understand that name when it was spoken.

Q. If the speaker speaks distinctly, slowly and loudly, why should you have any difficulty in taking down what she said?

Mr. Content: I object. That is argumentative.

The Court: He may answer it.

A. At that meeting those names I mentioned were spoken rapidly, to the best of my recollection, and for that reason I think I could not understand them distinctly.

Q. That particular name was spoken rapidly? A. The names were spoken rapidly.

Q. Is it not more natural that a speaker would speak names rather more distinctly than ordinarily?

Mr. Content: He does not claim he is a public orator, like Mr. Berkman.

Mr. Berkman: But he has attended mass meetings.

The Court: That question is argumentative. Objection sustained. You never can tell. Sometimes some people mention them slowly, others quickly.

Q. But I mean it is rather unusual that you are not able to take down the names of American Senators?

Mr. Content: That is argumentative.

The Court: That is argumentative. Sustained.

Q. And you were also not able, naturally, to take down the names of Russians?

The Court: He said that several times.

Mr. Content: If he can spell Breshkovska he should get a medal.

Q. There may have been references to Russia which would have been difficult for you to understand and take down?

The Court: No; the question should read, "Outside of what you do indicate you did not take down, was there anything else you did not take?"

Mr. Berkman: I mean that the Russian names being mentioned, necessarily there must have been references to Russia. These Russian names are Russian revolutionists.

The Court: Well, it says, in the transcript, something or other like "Als."

The Witness: With reference to Russia.

Q. You did not take down anything referring to Russia?

Mr. Content: That is not a fair question.

Q. Did you take down everything referring to Russia? A. I think I did; yes.

Q. Everything? A. I think I did; yes.

Q. No names?

The Court: He says he did not take those names.

Mr. Content: There is only one in the whole transcript.

The Court: Well, that name. I don't know what it is myself yet.

Q. There might have been other Russian names mentioned? A. At that time?

Q. Yes. A. There might have been, but I understood it to be one name. I think it was one name, and I could not understand that name.

By Miss Goldman.

Q. Will you please tell us of the three examinations for shorthand, stenography, you have taken?

What were these examinations? A. Regular shorthand examinations, held by the Municipal Civil Service Commission of this city, for the position of stenographer and typewriter.

Q. Did you require three different examinations? A. No; I have taken three different examinations of the same kind, at different times.

Q. I see. A. When the list expired I took another examination. When that list expired I took another examination.

By the Court.

Q. Was that before you came into the Police Department? A. Yes; I think I took one while I was in the Police Department, the third one—I think I was in the Police Department before I took that one.

Q. What is that, the position of stenographer and typewriter to a public department? A. In the city service.

Q. In the city service? A. Yes.

By Miss Goldman.

Q. Please tell us whether you have ever reported in court? A. No; I have not.

Q. You stated that at the meeting you were on the balcony in the back of the boxes? A. Yes.

Q. You were standing on a table? A. Yes.

Q. But you also said, I believe, that the meeting began about half-past eight, or a quarter to nine, and that the defendant Miss Goldman spoke at length. How long, approximately, do you think she spoke at that meeting?

> The Court: The transcript of the minutes containing his memorandums has the beginning and the end. I don't know whether you saw it.

A. My transcript shows she started to speak at 9.45 and had completed at 10.15 P. M.

Q. That means three-quarters of an hour? A. That means one half an hour.

Q. I beg your pardon. You were standing on the table. Did you have any kind of support while you were standing on that table? A. Why, the table was one of those round tables, and the table was against the wall, and I was leaning against the wall at times.

Q. You were leaning against the wall? A. Yes.

Q. How far back into the box? A. Why, the table I was standing on was about, I think that is about twelve or fifteen feet. The wall is about fifteen feet from the rear of the boxes in the balcony.

Q. Now, would you please tell the Court—or, rather, I think it is permissible to demonstrate how you held your book, and how you were taking your notes, while you were standing at the back of the wall? A. Why——

The Court: Just get up.

A. In this manner (indicating), and at times I was leaning against the wall.

Q. And you held your note book in your hand? A. Yes.

Q. And for half an hour? A. Yes.

Q. And were taking notes during all that time? A. Yes.

Q. And listening carefully to what I had to say during that half hour? A. Yes. And I had a copy of *The Blast*, and some other pamphlets, underneath my book, at the time, which I purchased at the meeting.

Q. Now, is it possible that while you were taking these notes, standing up, without having a support for your book, that during that half hour, while you were taking the notes, is it possible, do you think, that something might have escaped you from the speech delivered by Emma Goldman that evening, of May 18th? A. Yes; as I stated before,

I could have missed a line, or a few lines, when people were coming and going. There were constantly people going and coming at the place where I was standing, but I have taken the substance of your speech at that time.

Q. The substance? A. The substance; yes.

Q. Then, will you tell us how it happens that you did not take such a distinguished American name as Senator Stone? A. Because, as I stated before, I think, to the best of my recollection, at that time, she mentioned those names rapidly, and I did not clearly understand them, and if I would have I would have certainly made a note of them.

Q. Now, in taking the substance of my speech, as you said, a great deal must have escaped you?

> Mr. Content: I object to that. That is not a fair question.
>
> The Court: Objection sustained. How much did you miss, do you think?
>
> The Witness: Why, I don't think I missed very much. I might have missed a few lines here and there, as the people were coming and going, and during the noise, and the talking, and the like of that.

Q. I see. Then you took down what you thought was the substance of the speech? A. I took down what I heard you say, what I could hear and understand you say.

Q. You took down everything, as far as you were able? A. To the best of my ability.

Q. What I said? A. Yes.

Q. During the half hour? A. Yes.

Q. Just one more question. I would like to ask you, then, do I understand you to say that your notes, your stenographic notes, do not represent an exact record of the speech delivered by Emma Goldman on May 18th at the Harlem River Casino? A. They represent everything that I heard you say, and everything that I could understand you say.

Q. One more thing, and that is did I understand that you transcribed these notes three days later? A. Yes.

Q. The notes were taken on Friday? A. Night.

Q. Friday night, and you transcribed them when?

The Court: On the 21st, he said.

A. May 21st.

Redirect examination by Mr. Content.

Q. Did you take down there all you could hear and understand Miss Goldman said? A. I did.

Q. You don't mean you just took down here and there the substance of her speech? A. No, sir.

Q. Is there any question—will you look at your notes with me—is there any question that you heard her use these words, "We believe in violence and we will use violence"? A. No, sir; there is no question about that.

Q. Did you hear her say that? A. I did.

Q. Have you the recollection independent of your notes that she used those words? A. Yes.

Q. I will read you this, one paragraph further—no; perhaps two paragraphs further—"It will not be such an easy job, and it will compel the Government to sit up and take notice, and, therefore, we are going to support, with all the means at our support, with money and publicity—we are going to support all the men who will refuse to register, and who will refuse to fight." Do you now say she used the words, "Who will refuse to register?" A. Yes, sir.

Q. Is it likely that you would have confused any other word with the word "register"? A. No, sir.

Q. "Conscription" don't look very much like "registration" in shorthand, does it? A. No, sir.

Q. Two paragraphs further down, "We will have a demonstration of all the people who will not be conscripted and who will not register." See if you can find that? A. Yes.

Q. Could you have confused those words, "Who will not be conscripted and who will not register," with anything else? A. No, sir.

Q. Have you any independent recollection that Miss Goldman used the word "register" or "registration" during the speech—independent of your stenographic notes, that is? A. I have.

Recross-examination by Mr. Berkman.

Q. You realize you are testifying under oath? A. I do.

Q. And you are sure that Miss Goldman said, "We believe in violence and we will use violence"? A. I am.

Q. And the police took no action in the matter? A. I don't know.

Q. Were the police there? A. I was not near Miss Goldman enough to see if they did or not.

Q. You don't know whether the police took any action in preventing that meeting, as it were? A. I don't know whether they did or not.

Q. She was permitted to continue the speech? A. Yes.

Q. Secret service men were there? A. I don't know.

Q. I am asking. Were the police there, so far as you know? A. I think so.

Q. Were detectives there, as far as you know? A. I think so.

Q. And they permitted Miss Goldman to continue her speech? A. Yes.

The Court: Just write on this piece of paper, write in shorthand, "register."

(Witness writes.)

Now, in the middle of the line, write "conscription."

(Witness writes.)

And, now, the last word, write "violence."

(Witness writes.)

By the Court.

Q. Now, this is "register"? A. Yes.

Q. And this is "conscription"; is that right? A. Yes.

Q. And this is "violence," is it? A. Yes.

The Court: Now, let this be marked.

Mr. Content: I will offer that in evidence as Government's Exhibit No. 32.

(Marked in evidence as Government's Exhibit No. 32.)

The Court: Now, let that be shown to the stenographer for the defendants, and have him show it to the court stenographer.

Mr. Content: Will the Court make a note that Mr. Hawthorne says that they are all distinct, that there is no similarity between the three at all.

The Court: Yes.

CHARLES PICKLER, a witness called on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Content.

Q. You are a member of the bar of the State of New York? A. Yes.

Q. A member of the Federal bar also? A. Yes.

Q. You are also by occupation a shorthand reporter? A. Yes.

Q. You have had some experience taking down reports of meetings and public hearings, and so forth? A. Yes.

Q. At the request of the No-Conscription League, or the defendant Alexander Berkman or Emma Goldman, did you take and transcribe the speeches delivered at the Hunt's Point Palace, Borough of

the Bronx, in the City of New York, on the 4th day of June, 1917? A. No, sir.

Q. At whose request did you take them? A. The S. S. Company.

Q. That is the Stenographic Service Company? A. Yes.

Q. 55 Liberty Street? A. Yes.

Q. You are an outside stenographer? A. I am a public shorthand reporter.

Q. And they asked you to take them down? A. Yes.

Q. Did you take down in shorthand the speeches, the speeches of all the speakers at that meeting at the Hunt's Point Palace, on the Southern Boulevard, in the Borough of the Bronx, on June 4th, 1917? A. I took down all those who spoke in English.

Q. Well, none of them spoke in any other language, did they? A. I don't think so; I don't believe so.

Q. Did you take the speech in shorthand of Leonard D. Abbott? A. I did.

Q. Did you take the speech of the first speaker, Howard H. Hutchinson? A. I did.

Q. Did you take the speech of Mrs. Ballantine? A. I did.

Q. Did you take the speech of Mr. Peter Kane, Jr.? A. I did.

Q. Did you take the speech of Alexander Berkman? A. I did.

Q. Did you take the speech of Miss Emma Goldman? A. I did.

Q. She was the last speaker, wasn't she? A. Yes, sir.

Q. From time to time did you take the introductory remarks of the chairman in introducing a speaker? A. I did.

Q. I show you a transcript of the meeting of the No-Conscription League found in the headquarters of the No-Conscription League on the date of the

arrest, and I ask you whether you have compared that transcript with the stenographic notes taken by you of the speakers at the Hunt's Point Palace meeting on June 4th, 1917? A. Yes.

Q. Is that an accurate transcript to the best of your knowledge and belief of the stenographic notes taken by you of the minutes of the speeches of that meeting? A. It is an accurate transcript.

Mr. Content: I offer this in evidence; I offer the entire transcript in evidence.

(Received in evidence and marked Government's Exhibit No. 33.)

Cross-examination by Miss Emma Goldman.

Q. You are an expert stenographer, are you? A. I am a shorthand reporter, Miss Goldman.

Q. And may I ask you how long you have been taking shorthand? A. About twenty-five years.

Q. May I also ask you whether you have taken shorthand notes at meetings similar to the character of the Hunt's Point Palace? A. I have.

Q. In your estimation, Mr. Pickler, is it possible for a stenographer to take notes standing up during half an hour without supporting his book?

Mr. Content: I don't want to appear technical, but he has not testified that he took them standing up. He is only called as to this testimony in taking the speeches at the direction of the S. S. Corporation, and that that is an accurate transcript of the speeches he took down; but that don't make him an expert on the part of the Government——

The Court: I think that is correct.

Mr. Content: I would not then want to cross-examine him; I wouldn't want to impeach my own witness.

The Court: I will sustain the objection

without prejudice to recalling him when the defendants' case is presented, if there is any.

(Consultation between Court and witness.)

The Court: Mr. Pickler tells me that he is very busy, so I will let him answer it now. Of course, the answer binds the defendants.

By the Court.

Q. Were you here when Mr. Randolph stood up? A. Yes.

Q. Did you see how he held his book? A. Yes.

The Court: All right, then, you may answer.

The Witness: Have you finished your question, Miss Goldman?

Miss Goldman: Perhaps I will repeat the question.

By Miss Goldman.

Q. Standing up on a table, without a support for the book to lie on, other than the hand, of course, do you think it is possible to take accurate notes of what the stenographer would hear, of course, during a half hour? A. May I ask, Miss Goldman, what kind of a book he had, what sort of a cover it had? May I ask what speed the young man testified he could write at?

Mr. Content: 100 words a minute, on the average.

Mr. Randolph (standing up): I was standing like this (exhibiting book).

The Witness: 100 words a minute?

Mr. Randolph: Yes.

A. No.

Mr. Content: I don't care to cross-examine him now. I may recall him after. He is the defense's witness.

The Witness: I tell you that is perfectly absurd. Miss Goldman speaks 200 words a minute.

Mr. Content: Now, this witness is plainly prejudiced.

The Witness: I am not prejudiced at all.

Mr. Content: I am talking to the Court, not to you. This witness knows all about Miss Goldman, and——

Mr. Berkman: I object to Mr. Content trying to——

The Court: Yes; objection sustained.

Mr. Content: I don't care to cross-examine him.

The Court: Very good.

Mr. Content: I will now read *The Blast.* Will your Honor instruct the jury that the last witness, in the question that was asked by Miss Goldman, was not my witness, and it was not part of the Government's case?

The Court: Yes; they are so instructed.

(Reading of exhibits to the jury by Mr. Content.)

ESLI L. SUTTON, called as a witness on behalf of the Government, was first duly sworn, and testified as follows:

Direct examination by Mr. Content.

Q. You are an official stenographer in the United States District Court for the Southern District of New York? A. I am.

Q. How long have you been a shorthand reporter? A. About twenty years.

Q. At the request of the United States Attorney for the Southern District of New York did you attend a meeting held at the Hunt's Point Palace,

in the Borough of the Bronx, New York City, on the 4th day of June, 1917? A. I did.

Q. Did you take stenographic notes of the speeches of the speakers on that evening? A. I did.

Q. You have since examined the stenographic transcript of the S. S. Company, which I gave you—is that correct? A. Yes, sir.

Q. And have compared it with your stenographic notes? A. I have.

Q. And is it an accurate transcript of your stenographic notes? A. It is, except in some small minute details, where we were unable to hear.

Q. Well, Mr. Pickler was a little nearer than you were? A. He was.

Q. You took down the speeches to the best of your knowledge and ability at the time? A. I did.

Q. And there was some little confusion from time to time around the place which drowned out the last words of the sentences—something of that sort? A. Yes; and during sentences, at times.

By the Court.

Q. But, outside of some such minor details, this Government's Exhibit 33 is a correct transcript? A. Yes; it is a correct transcript of what was said there.

Q. You took Miss Goldman's speech that evening, did you? A. Yes.

Q. About how many words a minute did she speak? A. Well, I should judge she ran about 100 or 110 words a minute. She is not a fast speaker in a hall of that kind.

Q. She has a very loud and resonant voice? A. She has.

Q. Is she an easy person to report stenographically? A. She is; yes.

GEORGE D. BARNITZ, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Content.

Q. You are a detective sergeant connected with the City Police Department? A. Yes.

Q. Attached to what squad? A. The bomb squad.

Q. How long have you been a police officer? A. Twenty-one years.

Q. What is your shield number? A. 438.

Q. Were you present at the time that United States Marshal McCarthy arrested the defendants Alexander Berkman and Emma Goldman? A. I was.

Q. What date was that? A. The 15th of June, about four o'clock in the afternoon.

Q. Where? A. 20 East 125th Street.

Q. Were you there when the Marshal arrested Miss Goldman? A. I was.

Q. Who was arrested first, Miss Goldman or Mr. Berkman? A. Miss Goldman was arrested first.

Q. Where was she arrested? A. On the second floor of 20 East 125th Street.

Q. How much later was it when Mr. Berkman was placed under arrest by the Marshal? A. About two minutes later.

Q. Where was he arrested, if you know? A. On the floor above, the same building.

Q. At the time did you have any conversation with Miss Goldman? A. I did.

Q. To what did it refer? A. Referred to the publication called *Mother Earth.*

Q. I show you a copy of the *Mother Earth,* with "G. D. Barnitz" written on it in ink, and ask you whether or not you used that copy in having a conversation with her? A. I did.

Q. What was the conversation? A. I asked Miss Goldman what she, who was the Mother Earth Pub-

lishing Company, and whether it was incorporated or not, and she said it was not; she said I am the publisher and editor of *Mother Earth,* and I am responsible for everything that is in it. I then took a piece of paper I had in my hand, that document addressed to Mr. Content, United States Assistant District Attorney——

Q. I show you a letter and envelope addressed to Mr. H. A. Content, United States Assistant District Attorney, dated June 8, 1917, signed "Alexander Berkman and Emma Goldman," and ask you whether that is the paper to which you have reference?

Mr. Content: First, I would like to offer in evidence the particular copy of *Mother Earth* which Mr. Barnitz used in speaking to Miss Goldman.

(Marked in evidence as Government's Exhibit No. 34.)

A. I showed this paper to Miss Goldman, and asked her was she responsible for that document being sent to Mr. Content. She read it, and she said, "I was." I said, "Did Mr. Berkman arrange that with you?" and she said, "Mr. Berkman and I sent this document to Mr. Content together." I then took the document upstairs to where Mr. Berkman was, and showed it to him, and asked him whether he knew anything about this being sent to Mr. Content, and was it done by his direction, and he said, "It was sent by me and Emma Goldman; we sent this to Mr. Content together."

Q. Did you make a notation to that effect on the back of the paper? A. I did.

Mr. Content: I offer this in evidence, as Government's Exhibit No. 35, the letter, and the envelope, 35-A.

The Witness: At the same time I asked Mr. Berkman if there was anybody else associated with him in the publication called

The Blast, and he said there was not, that he was the editor and publisher of *The Blast.*

Q. I show you this copy of *The Blast,* with your name, G. D. Barnitz, on, and I ask you did you have this paper in your hand; is that the paper you had in your hand when you talked to Mr. Berkman? A. That was the one.

Mr. Content: I offer this in evidence.

(Marked in evidence as Government's Exhibit No. 36.)

Q. Now, at the time of the arrest, pursuant to the direction of the Marshal, various articles of literature, etc., were taken from the premises; is that correct? A. They were.

Mr. Content: May I recall Mr. Sutton for one question I forgot to ask?

The Court: Certainly. Yes.

ESLI L. SUTTON recalled.

Direct examination by Mr. Content.

Q. Is it possible that if a person is speaking at the rate at which Miss Goldman speaks, you having heard her speak, he can take a report of general, ordinary stenography on his book, standing up, providing there are some magazines underneath? A. Why, certainly. That is how the reporting in the Congress of the United States is done, standing up. I have reported many meetings standing up.

Q. I show you this; this is a regular stenographic reporting book? A. Yes.

Q. And if this were supported by a couple of magazines, or something, would it be possible to take down the minutes of a speaker at the rate Miss Goldman speaks, standing up? A. Yes; it is done every day.

Q. And done accurately? A. Yes; it is done every day.

By the Court.

Q. Now, you refer to a matter in Congress, when the different members of the House of Representatives are talking, and similarly in the Senate—is it not a fact that the stenographer is standing up all the time in taking his notes? A. Yes; it is.

Q. He goes usually near where the speaker is speaking? A. Yes; walks from where he was at the time the speaker arose, over within a good range of hearing.

Q. And as Congressman A finishes and Congressman B commences he walks over here (indicating), so as to be near the second speaker? A. Yes.

Q. And that is a fairly familiar method in the Senate? A. Done, as I say, every day.

Cross-examination by Mr. Berkman.

Q. You do not mean that the stenographers in Congress stand up for any length of time—for instance, a half an hour on a table? A. I mean there is one man on his feet.

Q. You don't mean—just to clear up this matter of the stenographers standing up in Congress—you don't mean the stenographers would be in a similar position in Congress as Mr. Randolph was at this meeting, at this crowded mass meeting, with a lot of noise, on a table, with the crowd all around him? A. Well, no; Congress is not a mass meeting, of course, and it is orderly.

Q. You do not mean also that the stenographer in Congress would stand up for half an hour without a chance to move, and still take absolutely correct notes, without shifting his position for half an hour? A. Why, I think so.

Q. He would stand, without shifting his position, and holding the book in his hand?

The Court: The question is, "Could he?"

A. He could.

Q. He could stand half an hour, and yet not be sufficiently tired to miss words, and have his notes partially incomplete? A. I think it would be perfectly feasible and practicable to report Miss Goldman, standing up for half an hour or an hour.

Mr. Berkman: I am talking now about Congress.

Mr. Content: What do they do in Congress—tell him?

Q. No; I mean would it be possible for a stenographer to stand up on a table in a crowded hall for half an hour, even for a longer time—I forgot to ask Mr. Randolph how he stood up—however, half an hour during one speech, without a chance to shift his position, and still take down accurate notes, and the stenographer not being an expert?

Mr. Content: That is not a fair question.

The Court: That is not proper. You can ask this: From your experience, do you think it would be possible for a competent stenographer to take a speech from 100 to 125 words a minute, standing on a table for half an hour, sometimes standing without support and sometimes standing supported by the wall back of him?

A. I should think so; yes.

Q. Is it not a fact that the Congress stenographers change their positions very often if they are forced to stand while they are taking their notes? A. Well, that is a matter of a man's own inclination.

Q. Is it not a matter of physical necessity, say, in order to keep the notes correct? A. Why, I don't think so. I don't know. That is for every man to say.

Q. Did you ever take stenographic notes in Congress? A. Did I ever? No; not in Congress.

By Mr. Content.

Q. You have seen it done? A. I have been there and seen it done.

Q. And some of the Congressmen often make a lot of noise, don't they? A. Yes.

Cross-examination by Miss Goldman.

Q. Please, Mr. Sutton, tell us, since Congress was mentioned, whether it is not a fact that the stenographers in Congress have their table to write on? A. Well, they have a table, but most of the reporting is done standing up.

Q. Just a moment. Isn't it a fact that the stenographers stand up only during the time when they are relieved by another stenographer? A. No; that is not the method.

Q. Did I understand you to say you had reported Congress? A. No.

Mr. Content: No; he did not. He said he had been there.

The Witness: I worked at one time for Mr. Murphy.

By Mr. Content.

Q. For whom? A. Mr. Murphy.

Q. That is the United States Senator from New York? A. No, no; the official reporter of Congress.

By Miss Goldman.

Q. How long a time, approximately, do you think the stenographers in Congress stand up to take notes? A. Why, I can't tell you that—from fifteen minutes to half an hour, three-quarters of an hour.

Q. Without using a table? A. Yes.

GEORGE D. BARNITZ resumed the stand.

Direct examination (continued) by Mr. Content.

Q. I show you the contents of this tray in my hand and ask you in whose office these were found? A. These were found in the office of Alexander Berkman, on the third floor of 20 East 125th Street.

Q. And have you affixed tags to each one of the things which are contained in this tray? A. Each package was marked.

Mr. Content: After lunch I will offer in evidence the different contents of this tray, but would the stenographer make a record at this time that this tray here is tray No. 1?

The Court: Say, Berkman tray.

Mr. Content: Berkman tray; yes.

Q. Now, I show you a second tray, and ask you where the contents of this tray were found? A. In the rooms occupied by *Mother Earth* and the defendant Emma Goldman.

Mr. Content: That may be called the Goldman tray?

The Court: Yes.

Q. I show you an additional bundle, containing a number of copies of the June issue of *Mother Earth*, and ask you where these were found? A. In the office of the defendant Emma Goldman.

The Court: Call that *Mother Earth* bundle.

Q. I show you an additional bundle, of the July, 1914, issue of *Mother Earth*, and ask where these were found? A. In the office of the defendant Emma Goldman.

Mr. Content: That is the July, 1914, issue.

The Court: Call that second bundle July, 1914, *Mother Earths.*

Q. I call your attention to a wooden box containing a number of wrappers, some stamped and addressed, others not yet stamped, and ask you where those were found? A. In the office of *Mother Earth,* with the defendant Emma Goldman.

The Court: Call that, wooden box.

Q. I show you a leather suit case, light brown leather, containing similar wrappers. Is that same testimony true as to all this as to the wooden box? A. The same thing in regard to the dress suit case, and a second dress suit case.

Q. A second, bigger dress suit case? A. The large dress suit case.

Q. They contain wrappers, with some publication enclosed, which is concededly *Mother Earth,* and they were all found in the premises of *Mother Earth,* or Miss Goldman? A. Yes; that is right.

By Mr. Berkman.

Q. Mr. Barnitz, when you asked Miss Goldman whether she was the editor and publisher of *Mother Earth,* did she answer frankly? A. Yes.

Q. And when you asked Mr. Berkman whether he was the editor and publisher of *The Blast,* did he answer frankly? A. He did.

Q. Did the defendants attempt to resist arrest? A. They did not.

Mr. Content: Will the stenographer note at this time that I offer all the contents of these trays and box in evidence, to be marked later.

The Court: We will take a recess at this time until five minutes past two.

(Recess until 2.05 P. M.)

AFTERNOON SESSION.

(2.05 P. M.)

GEORGE D. BARNITZ resumed the stand.

Mr. Content: Government's Exhibit No. 37 is a package of the June issue of *Mother Earth,* in the Berkman tray.

Government's Exhibit No 38 is a collection of form letters, similar to Government's Exhibits 4, 5 and 6, which have already been read to the jury.

Government's Exhibit No. 39 is a number of letters stamped and postmarked, similar to Government's Exhibit No. 10, which is a letter to Frank Harrison, duly sent through the mails, but returned to the sender.

Government's Exhibit No. 40 is a bundle of papers entitled "Free Speech and Free Press," by Harry Weinberger, of the New York bar.

Government's Exhibit No. 41 is a number of copies of the June issue of *The Blast,* similar to Government's Exhibit No. 26.

Government's Exhibit No. 42 is a bundle of addressed envelopes, but not stamped, with "The Blast" in the upper left-hand corner. They are of no particular consequence.

Government's Exhibit No. 43 is a bundle of leaflets announcing a meeting on June 23rd, entitled "Labor and War."

Government's Exhibit No. 44 is a leaflet entitled "McKinley's Assassination, from the Anarchists' Standpoint."

Government's Exhibits Nos. 45 and 45-A are the original and carbon copy of the copy of a hand bill for an open air demonstration at Madison Square Garden on June 16, the original and carbon copy.

Government's Exhibit No. 23 for Identification is now offered in evidence as one of the

things found. It is a circular letter of *The Blast.*

(Received in evidence as Government's Exhibit No. 23.)

Mr. Content: This is a circular letter of June 15, on the letterhead of *The Blast.*

Government's Exhibit No. 46 is a leaflet entitled "Workingmen, Why Should We Fight?"

Government's Exhibit No. 47 is a copy of a bill of the Walker Engraving Company, with a copy of the cartoon found in Berkman's possession.

Government's Exhibit No. 47-A is a copy of a cut.

Government's Exhibit No. 48 is a copy of a bill of the Walker Engraving Company, with a copy of the cut of *Mother Earth.*

That is the contents of the Berkman tray.

Now, this is the Goldman tray.

Mr. Berkman: May I ask the Court does all this go in as evidence in this particular case?

The Court: I am sure I do not——

Mr. Content: Yes; it is offered in evidence. It was found in the custody of the respective defendants at the time of their arrest.

Mr. Berkman: Well, the defense admits everything in their possession, in the office, of the magazines, the various publications, and all that. That is all admitted.

Mr. Content: Well, I have to have them marked.

The Court: They were all offered and received without objection before the recess. Now, if there is any particular one of these exhibits that you object to I will take it up. I am going to exclude, on my own motion, this pamphlet by Harry Weinberger. I do

not see that that has anything to do with the case.

Mr. Berkman: May we object to certain documents being put in there?

The Court: Certainly.

Mr. Content: Certainly.

Mr. Berkman: Which ones may we object to?

Mr. Content: Which ones do you want to object to?

Mr. Berkman: I don't think there is any number.

Mr. Content: Will I read them all over? I withdraw the offer of the pamphlet of Harry Weinberger.

The Court: All right.

Mr. Content: And move that it be stricken out of the evidence.

The Court: Yes; strike it out. Now, there is another pamphlet, Mr. Content, Exhibit 44, which I have just been examining.

Mr. Content: Do you want to exclude that?

The Court: "McKinley's Assassination, from the Anarchists' Standpoint"; I will exclude that.

Mr. Berkman: May I ask the Court who is the author of that?

Mr. Content: It is not named.

The Court: He is not named.

The Court: I was going to exclude it on my own motion, because there is nothing to show that the defendants were responsible for this paper, and it may have been found in anyone's possession.

Government's Exhibit No. 44 is excluded. I think that is all you offered, outside of the matters pertinent to the case.

Mr. Content: Yes; the other things are all *Mother Earth,* or *The Blast,* in the nature of exhibits already in evidence.

The Court: Just strike out Exhibits 44 and 40.

Mr. Content: This is the tray of Emma Goldman. A number of copies of the June issue of *The Blast*. I think we can cut down here on these three different sets of form letters, and that will save time.

The Court: Yes; those are form letters.

Mr. Content: Government's Exhibits 50, 50-A and 50-B are copies of form letters similar to Government's Exhibits 4, 5 and 6, already read to the jury.

These are some subscription blanks for the No-Conscription League, similar to those annexed to some of the letters which have already been marked in evidence, which are blank blanks. The same will be Government's Exhibit No. 51.

Government's Exhibit No. 52 consists of some pamphlets marked "Labor and War," announcing a meeting on June 23rd.

Government's Exhibit No. 53 consists of a few manifestoes similar to Government's Exhibit 1.

Government's Exhibit No. 54 is a large bundle of the June issue of *Mother Earth*. Give it one number.

Government's Exhibit No. 55 for Identification, not offered in evidence, the July, 1914, issue of *Mother Earth*, merely marked for identification. That is a bundle.

And the last exhibit, Government's Exhibit No. 56, that is the last number I offer, all the contents of the wooden box and the suit case, containing the June issue of *Mother Earth*, wrapped up in a newspaper wrapper.

The Court: That is all that contains?

Mr. Content: Yes. Shall we give it one number?

The Court: Yes.

(Marked Government's Exhibit No. 56.)

Mr. Content: That is a large number of *Mother Earths,* ready for mailing, in the wrappers.

WILLIAM H. RANDOLPH recalled.

Recross-examination continued by Mr. Berkman.

Miss Goldman: It it please the Court, we would like to know if we may ask at this point to have Mr. Randolph get up on the table, as nearly in the position as he was at that meeting, and whether we may further offer dictation to Mr. Randolph to take from *Mother Earth,* or any number of *Mother Earth,* or offer dictation for him to take as he would have taken it and did take it at that meeting. Is this how we do it now, and how will the Court instruct?

The Court: Well, I am perfectly willing he should do that. It is hardly practicable to get on the table. He can stand up.

Mr. Content: He can stand against the wall. There is a little platform there. He can stand there.

By Miss Goldman.

Q. Was that a round table or a square table? A. A round table.

Q. May we also ask was the table firm, like you are standing, or was it shaky? A. It was not fastened, it was firm.

Q. Well, you think then if you stand up you are nearly in the position you were at that table? A. I think so, yes.

Q. Did that table have four legs, or one leg? A. It was a round bottom, an iron bottom.

Q. You can't remember whether it was very shaky?

Mr. Content: He said it was not.

A. It was quite firm.

Mr. Content: But he said it was not fastened, however.

The Court: He now repeats the answer, it was quite firm.

Q. It was quite firm? A. Was not fastened.

The Court: Not fastened down.

Q. Not fastened down, but quite firm? A. Yes.

Mr. Content: Had a round iron stanchion or bottom?

The Witness: A solid iron bottom.

Mr. Content: A kind of a beer garden table?

The Witness: That's it.

Q. That is, of course, this would not be the position you were in at the Harlem River Casino? A. Not at all.

Mr. Content: Take that stand.

The Court: That is a very small stand. Mr. Randolph said that was almost solid.

By Mr. Content.

Q. How many magazines did you have under your book at the time? A. I had a copy of *The Blast* and *Mother Earth*.

Q. Didn't you say you had some other paper of Miss Goldman's, some lecture on anarchism? A. I had that in my pocket, it was a smaller book than that.

Q. Is that like the one you had under your book (indicating)? A. That is right.

Mr. Content: Just take these two. You are taking Government's Exhibits 41 and 37.

By Miss Goldman.

Q. We want to be approximately sure that you are in a similar position as you had in the Harlem River Casino? A. Yes.

Q. Now, you stated before that you were now and then leaning against the wall? A. Yes.

Q. While you stood on the table? A. Yes.

Miss Goldman: And I understand it was a round table with one leg.

Q. Now, when you leaned against the wall, where did you have your feet—were they in the center of the table, or the corner of the table? A. It would have to be the center, because if you were standing on the edge the table would move outward.

Q. And you would have to be very careful during your work to keep your feet in the center of the table? A. At that time, so as to keep your feet near the center of the table.

Q. And you further testified that people were coming and going all the time? A. Not all the time, some of the time.

Q. Where you were standing? A. Yes.

Q. Was your position quite secure in consideration of the fact that you were intent upon the speaker's speech? A. Yes.

Q. You were quite secure? A. Yes.

Q. Watching, while you were in the middle of the table, leaning against the wall, and listening to the speech? A. Yes.

Q. And having no table for your notes? A. Yes.

Q. Did you say there were other men standing on the table, or were you the only man? A. On adjoining tables, tables nearby. There were several tables along the wall, several tables there.

Q. You alone stood on that table? A. Yes.

The Court: I was going to say Miss Goldman could read. She can read from—the best way would be to read from the exhibit, read from the paper that he claims he took.

Miss Goldman: That is it.

The Court: Read from this very exhibit in evidence.

Mr. Content: From Exhibit No. 31.

Miss Goldman: Mr. Content, Madam Breshkovska is part of the provisional government in Russia, and she is left out here (indicating transcript).

Mr. Content: Naturally, when her name is so difficult to be taken in shorthand.

Miss Goldman: That is too bad for you. I am going to dictate, and it must naturally be slower than speaking. (Reading) "We don't believe in conscription, this meeting tonight being a living proof. This meeting was arranged with limited means. So, friends, we who have arranged the meeting, are well satisfied if we can only urge the people of entire New York City and America, there would be no war in the United States—there would be no conscription in the United States—if the people are not given"——

The Witness: You are not speaking at the rate of speed you spoke at the Harlem River Casino.

Q. Well, I must be permitted to read it as I always do. Just a minute, please, your Honor, then we are going to prove through different testimony, additional testimony, that as a matter of fact I am unfortunately a very rapid speaker.

The Court: Well, his testimony is that you spoke, as I recall it, around one hundred to one hundred and twenty-five words a minute.

The Witness: That is correct, your Honor. It would average one hundred, and at times went as high as about one hundred and twenty-five, according to my estimate.

Mr. Content: May I ask the official court stenographer whether he got all of Miss Goldman's dictation down?

The Official Stenographer: No, I did not. I could not understand all the words.

The Court: I think she was going pretty fast.

Miss Goldman: May I state here, to your Honor, that we can prove, as a matter of fact, that very few stenographers, unless they are great experts, are ever able to take me, because, as I said, I am unfortunately a very rapid speaker.

The Court: Well, just let me have that paper a minute.

Miss Goldman: Certainly (handing same to the Court).

Mr. Content: Will you note an objection on my part to further dictation by Miss Goldman at that rate of speed, I mean. The witness testified that is very much faster than Miss Goldman spoke on that evening.

The Court: Yes.

Miss Goldman: Exception taken.

The Court: Hand this to Miss Goldman, please (indicating Government's Exhibit 31).

Now, I just counted the words, and I know where one hundred ends, and one hundred and twenty-five words. I have not indicated to anyone where that is, where those words end. Now, read in any manner you please, Miss Goldman, and if anyone else has a watch, they may follow it, and I will follow to see how long it takes.

Miss Goldman: I am to read the same—

Mr. Content: Yes, the same, from the beginning.

The Court: Yes, the same.

Miss Goldman: Objection. May we not continue to read some other place.

The Court: Now, I did not suppose any such suggestion would be made, and I counted from the beginning now.

Miss Goldman: (reading) "We don't believe in conscription, this meeting to-night being a living proof. This meeting was arranged with limited means. So, friends, we who have arranged the meeting are well satisfied if we can only urge the people of entire New York City and America, there would be no war in the United States, there would be no conscription in the United States, if the people are not given an opportunity to have their say. Therefore we hope at least that a small portion of the population of New York City to-night is having its say. Friends, what I have to tell you to-night I want to impress upon your minds with all the intensity of my being, that we have with us people who came to break up this meeting, and therefore, friends, I ask you, friends, in the name of peace, in the name of freedom, and all that is dear to you, to be perfectly quiet and when the meeting is over"——

The Court: That is enough. At one hundred words, thirty-five seconds had elapsed, and at one hundred and twenty-five words, forty seconds had elapsed.

The Witness: That was very much faster than she spoke at the Harlem River Casino.

Miss Goldman: I wish to offer, your Honor, that in speaking extemporaneously, it is known, I am sure, to your Honor, that

the speaker who speaks rapidly, naturally speaks more rapidly than reading.

The Court: That has all got to be a matter of evidence. I do not see that we can get anywhere with this, because you will be at liberty to produce testimony as to the manner of speaking, or as to how many words a minute the stenographers can take, and so on, and I have marked with great care where the one hundred words ended, and as I said before, it was thirty-five seconds, and one hundred and twenty-five words, forty seconds, between thirty-nine and forty seconds.

Miss Goldman: Would it be in place now to ask Mr. Randolph to read what he has taken down now?

The Witness: I have not gotten it all down, Miss Goldman.

The Court: Read what you took down first, when the interruption came.

The Witness (reading): "We don't believe in conscription. This meeting to-night being a living proof. This meeting was arranged with limited means, so friends, we can only urge the people that there will be no conscription in the United States"—that is as far as I got.

By Mr. Content.

Q. Miss Goldman just dictated to you. Was that much more rapid than her speech on that evening, May 18th? A. Yes.

By Juror No. 4.

Q. I would like to know at the time you were upon that table, in regard to this dictation, you merely placed yourself in a location where you would be at ease to take this dictation, whether it was round or smooth, or what? A. Yes, I tried to be in a position to see the speakers.

By the Court.

Q. Did you have instructions that night to do anything else than take the speeches that were made, to the best of your ability? A. No, sir; that was all.

Q. That was your instruction? A. Yes.

Q. And when you transcribed these minutes, did you do it by yourself? A. Yes.

Q. That is, it was your own work, was it? A. Yes.

Q. Was that done up at your home, or at police headquarters? A. It was done at my home.

Q. And when you had transcribed your minutes, did you then give the transcribed copy to some superior officer? A. I did.

Q. And is that the regular custom in regard to your work in the Police Department? A. It is. I wish to add, your Honor, that the reason I was only able to transcribe my notes on May 21st, was that I was working on some other cases in the meantime, and also had detective work, and my time was taken up on other work until I had an opportunity to transcribe the notes, and for that reason I transcribed my notes on May 21, three days later.

Q. Did you receive between the night of the meeting and the day you transcribed your notes, any particular order to transcribe them, or was that contained in your original order? A. Yes, sir; that was part of the order to transcribe them, as soon as I could.

Q. And you transcribed them on the 21st, without any further order? A. Yes.

Q. And in accordance with your usual custom in your work in the Police Department, in that regard? A. Yes.

Q. And when you have taken the minutes at some such meeting as this, then, if I understand you correctly, you transcribed them at your first available opportunity? A. Yes.

By Mr. Content.

Q. Between the time you took Government's Exhibit 30, your stenographic notes, for identification, and the transcript, 31, had you seen the District Attorney or Government's officers, or anybody else? A. No, sir.

BENJAMIN SILVERMAN, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Content.

Q. You are a sergeant in the Eighth New York Coast Defense of the United States National Guard? A. I am, sir.

Q. And, as a private citizen, did you attend a meeting held at the Harlem River Casino, New York City, on the evening of May 18, 1917? A. Yes, sir.

Q. Did you hear the defendant Emma Goldman speak? A. I did, sir.

Q. Have you heard her speak on other occasions as well? A. Yes.

Q. What other occasions, for example? A. Well, at the Hunt's Point Casino.

Q. On June 4th? A. On June 4th, and another occasion at 114th Street, the Star Lyceum.

Q. Royal Lyceum? A. Royal Lyceum, and down at Forward Hall, East Broadway.

Q. Was that June 14th? A. Yes.

Q. Now, at the meeting on May 18th, how far were you, where were you standing with reference to the speakers' platform, at the time Miss Goldman delivered her address? A. I was standing on her right.

Q. How far from the platform? A. About twenty-five feet.

Q. Could you hear her plainly? A. Yes.

Q. Could she be heard in all parts of the auditorium? A. Yes.

Q. How many people would you estimate to have been present on that occasion in the hall? A. Four or five thousand. That is all they could get into the place.

Q. Could you hear practically everything that Miss Goldman said? A. Yes.

Q. You heard Miss Goldman dictate to the last witness who was on? A. Yes.

Q. Did she speak as rapidly as she did on the evening of May 18th, as rapidly as she dictated in the court a moment ago? A. Why no——

Mr. Berkman: I object.

The Court: Wait a minute.

Mr. Berkman: On the ground that this witness has not proven himself an expert, or that he listened carefully to the dictation here a while ago.

By the Court.

Q. Were you in the court room when Miss Goldman a few minutes ago read from the article, and the stenographer, Mr. Randolph, stood here? A. Yes.

Q. Did you listen to it closely? A. Yes.

Q. And you were about twenty-five feet away from where Miss Goldman was talking the night of the Harlem River meeting? A. Yes.

Q. And are you able to say whether or not in answer—are you able to answer the question of the District Attorney?

Mr. Content: Yes or no.

A. Yes.

The Court: Then I overrule the objection.

Mr. Berkman: Exception.

The Witness: Why, she spoke much faster in the court room; she spoke about three times as fast as when she read a speech.

The Court: That is, when you say she read a speech, you are referring to the occasions when you heard her?

The Witness: Yes.

The Court: How many times did you hear her?

The Witness: I have heard her on a number of occasions.

By Mr. Content.

Q. Approximately, how many? A. About four non-conscription meetings.

Q. Did she, in dictating, speak more rapidly than at any of the four meetings you previously named in response to my question? A. Yes, sir.

Cross-examination by Mr. Berkman.

Q. You are also an expert in stenography? A. No, sir.

Q. You don't know anything about stenography? A. No, sir.

Q. And what particular way have you of judging whether Miss Goldman, when she was speaking on the platform, is different, that is, how much different from what she spoke here? A. Why, I could not quite catch her words where I was sitting then, over in that corner (indicating).

Q. You could not? A. No, sir.

Q. That would prove she did not speak as loud as in the other hall? A. Why, she spoke more distinctly at the hall than she did in the court room here.

Mr. Berkman: Naturally, the acoustics being better, I suppose.

Mr. Content: That has nothing to do with it.

Q. But you have no particular way of telling whether it was faster or twice as fast, or ten times as fast? A. My own idea of it.

Q. Generally, a general idea of it? A. Yes, a general idea.

Q. You were at the Harlem River Casino meeting? A. Yes, sir.

Q. You came with some other soldiers? A. No, sir.

Q. You came all alone? A. I came alone, sir.

Q. Were any other men from your regiment or company there? A. There were men from all regiments.

Q. There were men from all regiments? A. Yes.

Q. All regiments stationed in New York? A. In and around New York, I should say.

Q. You mean men from the various regiments? A. Why, there were some soldiers there, some sailors, some marines.

Q. I am speaking of soldiers, of soldiers and national guard, military? A. Yes.

Q. Were there members of the military there that evening at that meeting? A. Yes.

Q. Did they belong to your regiment? A. Yes, some of them.

Q. Did some of them belong to your company? A. No, sir.

Q. You came alone without any other members from your company? A. Yes.

Q. Did you know about the other members of your company coming? A. I think I did, coming out. I was not in uniform that night.

Q. You were not in uniform? A. No, sir.

Q. There were members of the military in uniform and out of uniform? A. Yes.

Q. Quite a number of them? A. I think there was.

Q. Do you remember any disturbance at the Harlem River Casino? A. No disturbance whatever, as I recall.

Q. Do you recall anybody shouting down from the galleries, interfering with the speakers? A. I noticed a bugler approach the stage and offer to hoist a flag, and it was refused by you.

Q. I beg your pardon, what is that? A. There was a bugler attached to the 14th Infantry of Brooklyn, approached the stage with a flag, and he demanded the right to hang it up, as there was none in the building, and he was refused.

Q. He spoke to me? A. Yes.

Q. Are you sure he spoke to me? A. I am positive.

Q. Where was I, sitting or standing on the platform? A. You were sitting on the left of Miss Goldman.

Q. On the left of Miss Goldman? A. Yes.

Q. Where was Miss Goldman? A. Sitting on your right.

Mr. Berkman: Certainly, I understand that. That don't indicate the position of either.

The Court: He means, what part of the platform was Miss Goldman.

The Witness: Why, they were sitting on the—towards the rear, I should say, as near as I can remember, it was some time ago.

By the Court.

Q. What time of the evening was this? A. Why, this was about 8.45.

Q. Had the speaking begun? A. Yes.

Q. Speaking was going on at the time? A. Yes.

Q. When the man with the bugle approached him, asking about the flag? A. Yes.

By Mr. Berkman.

Q. How did he approach me, was the speaker in front of me, or was I in front of the speaker? A. The speaker was in front of you.

Q. The speaker was in front of me? A. He got right up on the stage, and was stopped by the speaker.

Q. The speaker was in front of me? A. Yes.

Q. And a man approaching me, necessarily would have to pass the speaker first? A. Why, there was some lady stopped him, sir, and he said he demanded the right to the platform, and you said you would give him the platform, and asked him not to stay, and he didn't do it.

Mr. Berkman: That was a different man you are speaking about, the bugler.

The Court: You are both speaking about the bugler?

The Witness: Yes.

The Court: And then what happened?

The Witness: He was refused, so he only probably asked the chairman—I don't know really what he asked, but there was a disturbance, and I happened to notice men in uniform, and there was no non-commissioned officer, and I approached, as a non-commissioned officer, to find out the trouble, and so I overheard the conversation between this gentleman here and the bugler from the 14th.

Mr. Content: Mr. Berkman, you mean?

The Witness: Yes.

The Court: And the bugler.

The Witness: Yes.

The Court: And after what you saw happened, was the thing quieted down?

The Witness: No, sir, Inspector Myers came over——

Mr. Content: He is the police inspector?

The Witness: Yes, and asked me what the trouble was, and I didn't—I told him I didn't know, but would find out, and when I found out, the Inspector says, "Well, you

know, they don't have any use for any flag, anyway," he says.

Mr. Berkman: Now, that is all out of place.

By Mr. Content.

Q. Was the defendant present when Inspector Myers said that? A. Yes, sir, he was.

The Court: Only state what Inspector Myers said.

By Mr. Berkman.

Q. Excepting there was a disturbance—you didn't know there was any disturbance, you didn't see anything of the kind?

Mr. Content: I object to the form of the question, he didn't say that.

Mr. Berkman: He did, it is on the record.

The Court: What he said was—the jury, of course, can take their own recollection—was that there was no disturbance, except in connection with the bugler and with the flag. Is that right?

The Witness: Yes.

The Court: Was there a general disturbance in the hall?

The Witness: No, sir.

By the Court.

Q. Only this bugler incident? A. Yes, this bugler incident.

Q. Then did the bugler go off at that time, go off the platform? A. At my orders, sir, I told him who I was, and he immediately left the hall.

Q. You told him to stop? A. Yes, sir, I did.

Q. And he left the hall? A. Yes.

Q. After that, did the speaking go on, without any disturbance? A. It did, sir.

Q. And the meeting finished? A. Yes.

Q. In due course? A. Yes.

By Mr. Berkman.

Q. I am not clear in my mind about where the bugler was, was he on the platform? A. Yes.

Q. He was? A. Yes.

Q. How did he get there? A. Well, there is a short flight of stairs runs up.

Q. And anybody could come up those stairs to the platform? A. Why, they stopped him, but he got up anyway.

Q. He got up on the platform? A. He did.

Q. Was he in uniform? A. He was.

Q. And spoke to me? A. He did.

Q. And the speaking was going on all this time? A. Why, I think it was stopped off.

Q. Who was speaking at that time? A. I don't know.

Q. You don't know who it was? A. No, sir.

Q. Was I the speaker? A. No, sir, you were not the speaker.

By Miss Goldman.

Q. I want to ask the witness where I sat at that particular time when he stated Mr. Berkman was approached and refused—where was I? A. Sitting on the right.

Q. On the floor of the house or on the platform? A. No, sir, on the platform of the stage.

Q. Did you see me sitting on the platform? A. I did.

Q. At any time? A. I did.

Q. You heard me speak? A. I did.

Q. And you saw me sitting on the platform at any time before I spoke? A. Yes, ma'am.

Q. Were you on the platform? A. No, ma'am, I was not, I was not on the platform at the Harlem Casino, I was at some of the other meetings.

Q. You saw me from the body of the house? A. I did.

Q. Sitting on the platform, before I spoke? A. Yes, ma'am.

Miss Goldman: That will do.

By Mr. Berkman.

Q. Do you know, Mr. Silverman, whether my foot was injured at the time, at that time on the platform? A. I think your foot was injured at that time.

Q. It was? A. Yes.

Q. Do you remember a number of people around me, to protect me because of my injury then? A. That I can't recall. There was quite a number of people on the stage.

Q. There was quite a number? A. Yes.

Q. They were around me, so that they could not push me?

Mr. Content: How does he know that?

Q. Do you think it was possible for a perfect stranger to approach me, with several friends all around me?

The Court: Now, that is argumentative. He has told you.

Q. You are sure you saw Miss Goldman sitting on the stage? A. Positively.

The Court: He said that three or four times.

By Mr. Content.

Q. She sat on the stage at the June 4th meeting, too, didn't she? A. Yes.

Q. She sat on the stage at the Forward Hall meeting on the 14th? A. Yes.

By Mr. Berkman.

Q. And you swear you saw me sitting on the platform at all those meetings? A. At one meeting on 114th Street, I believe she came right down to the hall, and immediately commenced to speak.

The Court: When was that?

Mr. Content: That was the Royal Lyceum?

The Witness: Royal Lyceum.

EMMA JENTZER, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Content.

Q. You are a special agent of the Department of Justice? A. Yes.

Q. Were you in May and June of this year? A. Yes.

Q. Did you attend a meeting held at the Harlem River Park and Casino in New York City, on May 18, 1917? A. Yes.

Q. Did you hear Emma Goldman speak? A. Yes.

Q. Could she be plainly heard in all parts of the auditorium? A. Well, where I was, she could be plainly heard.

Q. Where were you? A. On the steps, leading upstairs to the balcony.

Q. How far removed was that from the speakers' platform, approximately? A. I should say about fifty feet.

Q. Were you here before, while Miss Goldman was talking to the witness Randolph, who testified a few minutes ago? A. Yes.

Q. Will you state, in your opinion, whether she spoke as rapidly at the Harlem River meeting as she did in talking to Mr. Randolph? A. No, sir, not quite so rapidly.

Q. Did she speak loudly and clearly at the meeting? A. Very loudly and clearly and distinctly.

Q. And you could hear her fifty feet from the platform? A. Oh, yes.

JOHN C. DILLON, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Content.

Q. What is your occupation? A. Stenographer in the service of the New York City Police Department.

Q. You are not a police officer, however? A. No, sir.

Q. A stenographer appointed to the Police Department? A. I am a stenographer in the service of the New York Police Department.

Q. Are you a civil service appointee? A. Yes.

Q. How long have you been taking shorthand reports? A. Ten years, reporting meetings.

Q. Have you ever taken the speeches of Emma Goldman? A. Yes, on three different occasions.

Q. When? A. At a birth control meeting in March, 1915, at Carnegie Hall, and at the Hunt's Point Palace anti-conscription meeting.

Q. On June 4, 1917? A. June 4, and at the Forward Hall anti-conscription meeting.

Q. June 14, 1917? A. Yes, sir.

Q. In your opinion, about how many words a minute, on an average, does Miss Goldman speak when delivering a public address, at the times when you have been present? A. I never took her where she spoke above 125 words a minute.

Q. That is her average, in your opinion? A. Below that.

Q. And you were present at the Hunt's Point meeting? A. Yes.

Q. At that time, did she speak as rapidly as she did when she dictated to Mr. Randolph? A. She did not speak—when she dictated to the witness Randolph, in court to-day, she spoke about twice as fast as she does when she makes speeches.

Q. She is a loud, clear speaker? A. Very loud and clear, and very easy to take.

Q. Easy to take? A. Yes.

By the Court.

Q. You mean by that her enunciation is distinct? A. Very clear and distinct.

Q. You are not a policeman yourself? A. No, sir, I am a stenographer.

By Mr. Content.

Q. And the meetings you reported because you were directed to go and report them? A. Yes.

Q. You have no personal interest in the result of your dictation? A. None whatever.

(No cross-examination.)

JEROME MURPHY, a witness called on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Content.

Q. You are an acting detective sergeant of the New York City Police Department? A. I am.

Q. What squad? A. Bomb squad.

Q. What is your shield number? A. 571.

Q. On the 15th of May, did you have under observation or surveillance the premises 20 East 125th Street? A. I did.

Q. At any time during that afternoon, did you see the defendants enter the premises? A. They did.

Q. Which one entered first? A. Mr. Berkman.

Q. About what time was that? A. About 1.45.

Q. Did Miss Goldman follow him some time later? A She did.

Q. About what time did she enter? A. About 2.15.

Q. Were you present when the United States Marshal entered those premises also? A. I was.

Q. When did he come, about? A. Around five o'clock, half past four.

Q. Were you present when the arrest was performed? A. I was.

Q. Did you stay behind later, and also see the various documents that were found in the possession of the defendants at the time of their arrest, and brought to the Marshal's office? A. I was.

Q. And you have been present in court while the different exhibits that were testified to, were taken out of the boxes, and offered in evidence? A. I was.

Q. And you assisted Sergeant Barnitz in arranging these different exhibits? A. Yes.

Q. And does your testimony in any way differ from his? A. It does not.

Mr. Berkman: No questions.

Mr. Content: Now, Mr. Berkman, I appreciate you are not a lawyer, but I spoke to Mr. Weinberger about this part of the case; it is part of the Government's proof that on the 18th of May, 1917, the President issued a proclamation fixing June 5, 1917, as registration day, and I stated to Mr. Weinberger that if the defense would not concede that, I might have to bring someone from the State Department in Washington to testify that the President issued that proclamation.

Mr. Berkman: We concede that.

Mr. Content: Let the record then read: It is conceded that on the 18th day of May, 1917, Woodrow Wilson, President of the United States, issued a proclamation, as provided by Section 5 of the Selective Draft Act of May 18, 1917, fixing June 5, 1917, between the hours of 7 A. M. and 9 P. M., as the date upon which all persons of conscriptable age, or rather, all persons between the ages of twenty-one and thirty, both inclusive, except those exempted, should register in the precincts wherein they may have their permanent homes.

The Court: That is conceded?

Mr. Berkman: Oh, that is the fact.

Mr. Content: And the issuance of the proclamation.

Mr. Berkman: You mean the signing of the Conscription Bill?

Mr. Content: No, the Court will take judicial notice of that, but merely that the President, in accordance with the bill, issued a proclamation fixing June 5, as registration day.

Mr. Berkman: Oh, yes.

Mr. Content: Between the hours of 7 A. M. and 9 P. M., calling upon all male persons, who had attained their 21st birthday, but not yet attained their 31st birthday, except members of the regular army, the navy, the marine corps, the national guard, and naval militia, officers' reserve corps, and enlisted reserve corps, in the active service of the United States, to register in the precincts wherein they may have their permanent homes.

Mr. Berkman: Yes.

The Court: Very good.

Mr. Content: The Government rests.

The Court: Let that be what the President has lately called, the Selective Service Law.

Mr. Content: The Selective Service Law of May 18, 1917. The Government rests. Do you want to move to dismiss on the ground the Government has not made a case —I have not read a couple of exhibits to the jury, I was so anxious to get through, and with the permission of the Court, I shall read——

The Court: Well, proceed then.

Mr. Content: Will you note that this should have been read before the Government rested?

The Court: Yes, the stenographer will note that.

(At this point Mr. Content read from Government's Exhibit No. 35.)

Mr. Content: Now, I wish to read the speech of Alexander Berkman and Emma Goldman at the meeting on June 4, 1917, which was referred to as the Hunt's Point meeting.

Mr. Berkman: I supposed it would be the customary thing to put in the defense after the State closed its case, but the defense is perfectly willing to have——

The Court: No, you have a misapprehension there. Mr. Content, or you, or any of the parties to the suit, after an exhibit is in, may read the exhibit. He announced he would rest, and after he rested he stated that in the desire to put in some of these routine matters of proof, he forgot to read the exhibit, and he is simply doing what he is entitled to do.

Mr. Content: This also was received as Government's Exhibit No. 33.

The Court: Yes.

Mr. Content: I am reading now from that portion of Exhibit No. 33 which contains the transcript of the speech of Alexander Berkman (reading).

Mr. Content: The Government rests now.

The Court: Very well. The Government rests. Have you any motions, Mr. Berkman, or Miss Goldman?

(GOVERNMENT RESTS.)

Miss Goldman: We move to dismiss the indictment on the ground that the Government failed to show there was a conspiracy to tell people not to register; and I further move to dismiss the indictment on the ground that the Government failed to prove or bring evidence that the defendants Emma Goldman and Alexander Berkman advised people not to register; and furthermore, move for the dismissal of the indictment on the ground that the Government failed to show in any of the speeches read or literature in evidence, that the defendants Emma Goldman and Alexander Berkman in their writings, in their communications, told the people not to register.

The Court: Do you make the motion on behalf of both defendants?

Miss Goldman: Both defendants.

The Court: Motion denied, and an exception will be reserved to each defendant.

The Court: The defense may open.

Mr. Berkman opened the case to the jury on behalf of the defendant.

THE DEFENDANTS' CASE.

Mr. Content: I understand the opening was on behalf of both defendants?

Miss Goldman: Both defendants.

Mr. Content: Just for the purposes of the record, in order to protect myself on my direct case, I ask the Court to note that Mr. Pickler, the gentleman who was so busy that he requested the Court to let him answer a question when it was out of order, is in court at the present time.

Miss Goldman: We asked him to come.

JOHN REED, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Mr. Berkman.

Q. Mr. Reed, what is your business? A. I am a newspaper reporter.

Q. A newspaper reporter? A. Yes.

Q. Is that the only work you do now, or did in the past? A. I have been a war correspondent, if you want to differentiate at all. I have also written books.

Q. Did you write a book on the war? A. I have written two books on the war, yes.

Q. You were also a war correspondent for a time? A. I was.

Mr. Content: I ask Mr. Pickler to withdraw from the room. He is making remarks about me at the reporters' table. I do not think it is fair. I ask him to withdraw until he is called as a witness.

The Court: There must be no remarks by any of the witnesses to any persons excepting the persons concerned with the case.

Q. Mr. Reed, you were a war correspondent for what magazine? A. I was war correspondent in Europe, representing the *Metropolitan Magazine*, and the *New York World*.

Q. Representing the *Metropolitan Magazine* and the *New York World?* A. Yes.

Q. Were you war correspondent on various occasions in different countries? A. I was war correspondent for all the different European countries, all the belligerent European countries, and also in Mexico, before that.

Q. Were you in Mexico on behalf of the *Metropolitan Magazine?* A. And the *New York World*—the *Metropolitan Magazine* and the *New York World*.

Q. You wrote books on the war? A. Yes.

Q. How many years have you been a war correspondent? A. I was a war correspondent three years in succession.

Q. Mr. Reed, will you please tell us what is your impression, or the impression of people you associate with in the newspaper world and the magazine world, with regard to conscription and registration—are they different matters, or the same thing?

Mr. Content: I object.

The Court: Now, I will sustain the objection, and explain the reason why, so that it is perfectly clear to you. The opinion of any layman as to whether conscription and registration are different matters, is utterly immaterial. The jury will be instructed as to what the law provides in regard to registration, and be instructed, so far as may be necessary, as to what is meant by what has been called conscription, or what was recently called in the President's latest proclamation, the Selective Service Law, and in regard to the various documents and spoken words of the defendants which are in evidence. In

so far as the Court may or may not construe those words, it is for the jury to determine the meaning of those words; and the opinions by witnesses, as to whether or not there is a difference between conscription and registration, and for them to say what the difference is, are utterly immaterial and quite irrelevant. The subject is not irrelevant, but the opinion of a witness is irrelevant and immaterial, and for that reason I sustain the objection, and the defendants may each reserve an exception.

Mr. Berkman: Exception taken. But I am not quite clear about the ruling. May I ask the witness whether if he should read an article where conscription is repeated two or three times, would it lead him to believe that the same thing is meant by registration.

The Court: No, that is for the jury to say from all the facts and circumstances of the particular case in mind. In other words, no outside layman can construe the writings in the case. That is solely for the Court or jury, as the case may be, or for both.

Q. You have talked with members of the House of Representatives, and Senators, and Cabinet Members, about the Selective Draft Law? A. Yes.

Q. Did they speak about conscription, as if it was the same as registration?

Mr. Content: Finish your question.

Mr. Berkman: That is the question.

Q. Did they speak to you about conscription as if it was the same as registration?

The Court: That is excluded on the same grounds.

Mr. Berkman: Yes.

Q. Do you know whether there are not people who believe in registration, and who registered, and who yet opposed conscription? A. Yes.

The Court: That is also excluded. Strike out the answer as immaterial and irrelevant.

Q. Were you at the Harlem River Casino? A. No, I was not.

Q. You were not at that meeting? A. No.

Q. Do you remember the mass meeting in Hunt's Point Palace, June 4th? A. Yes.

Q. Were you there? A. Yes.

Q. Did you notice any disturbance at that meeting? A. Yes, I did.

Q. Do you know there was some disturbance—was the disturbance created by anyone in the audience? A. Yes, it was created, the two times I saw the source of the disturbance. It was created by soldiers.

Q. It was read here from the stenographic minutes of the meeting at the Hunt's Point Palace, that during my address—were you present in Hunt's Point Palace when I was on the platform? A. Yes.

Q. It was stated that during my address an electric bulb, and other things, were thrown on the platform from the gallery—did you see them thrown? A. Yes, I saw both electric globes that were thrown at that time during your address.

Q. Who threw them? A. A soldier.

Q. You did not see any one of our own people throwing anything at the speakers? A. No, I didn't see anything of that.

Q. I mean the audience was peaceful and well behaved, with the exception— A. Well, the audience began to get mad as the second globe was thrown.

Q. Naturally. A. But nothing was done.

Q. Did the police try to prevent the soldiers from throwing things? A. After I saw the second globe thrown, I went down to the captain of police, and I asked the captain—told the captain, at least, that

globes, light globes, had been thrown by soldiers from the gallery, and asked him if he would go and stop it, and he looked at me, and after a while he turned his back said, "I will see about it."

Q. Did he see about it? A. I don't know whether he saw about it or not, but as I was coming out of the hall afterwards, the captain of police was standing at the door, and he fixed me with his eye and said very clearly, "So you are the young man that said you saw two light globes thrown on the stage," and I said, "Yes," and he said, "I have been up there looking about it, and all I can find out was that one had been thrown," and I said, "I beg your pardon, I am sorry to have made a mistake," and went away.

Q. You heard my speech at the Hunt's Point Palace? A. Yes.

Q. Did you hear me speak about registration, or about conscription? A. I heard you speak about—I heard you advise people to resist conscription, as I understand it, and heard you refer to registration as the undertaker.

Q. I said that registration was the undertaker? A. Yes.

Q. Did I say they should resist registration? A. No.

Q. You did not hear me advise them not to register? A. No.

Q. Did you hear me advise them not to register on any other occasion? A. No. Two days before your meeting, I came up, it was in my capacity as a newspaper reporter, and I asked you privately, not for publication, whether you were going to advise your people against registration or not. You have known me a long time, and you can trust me, and you told me at that time you were not going to advise your people not to register.

Q. Do you remember an occasion upon which President Wilson sent for you to come to Washington? A. Yes, sir. Do you want me to——

Mr. Content: No, wait until the next question.

Q. Was that to consult you upon some political or social matters?

Mr. Content: If he answers yes or no, I don't object.

The Court: I don't see why it has any bearing, but——

A. I would rather explain it.

Mr. Content: No, I won't object if you answer yes or no.

The Witness: Well, yes, then.

Q. To secure your opinion on certain matters? A. Yes.

Q. Was it with regard to the Mexican situation?

Mr. Content: Objected to as having nothing to do with this case.

The Court: Not the slightest. Sustained.

By Miss Goldman.

Q. As a newspaper man, have you been reading the magazine *Mother Earth?* A. I have been reading it as a private citizen.

Q. How long have you been reading *Mother Earth?* A. About five years.

Q. May I ask you whether, in reading *Mother Earth,* you can tell the Court and jury as regarding the attitude towards war and militarism?

Mr. Content: I can't see that his opinion of what he read in *Mother Earth* has anything to do with this case.

Miss Goldman: He can explain things.

The Court: The best evidence is the article, if you want to prove the point that you indicate, by merely putting in any selection of representative articles, but his conception

of them is immaterial. You can put in as far back as you want to, as many or as few as you deem advisable, and that series of articles, if so put in, will thus disclose to the jury whatever their contents are.

Miss Goldman: Very well. Exception taken.

Q. You say you were at the meeting at the Hunt's Point Palace? A. Yes.

Q. Were you close enough to see what was going on on the platform? A. Yes.

Q. Did you see me sitting down on the platform until I began to speak? A. My recollection is that I did not see you sitting on the platform at all until after then.

Q. Until I came to the platform to speak? A. Until you came to the platform to speak.

Q. Could you refresh your memory, and tell the Court at what particular moment I got to the platform to speak, approximately?

The Court: You mean in time, or with reference to some fact.

Miss Goldman: No; not the time; in reference to the disturbance at the meeting.

A. I was just going to say it seems to me you came to the platform to raise your hand and ask the audience to be quiet. I am not sure about that, but I think that was when it was. I know you did, but I don't know whether that was upon the occasion of your coming to the platform or not.

Q. Up until that time you would have been able to see me if I had been sitting on the platform? A. Yes.

Q. So that I was not sitting on the platform? A. To the best of my recollection you were not.

Q. You stayed in the meeting until the end? A. I stayed in the meeting until the end.

Q. Then, was it your impression that when I began to speak this disturbance was serious, or at its height? A. About then, I should say.

Q. And during and after the speech was the audience disturbing, or what happened? A. Well, during the speech there was no disturbance at all from the audience, except the soldiers who shouted, one from the back of the gallery and one from the left-hand gallery, looking toward the stage, or near the stage, who shouted things, and something was thrown; but I did not—I was at that time not in the same position I had been when Berkman was speaking, or began speaking, and I did not see what was thrown, and could only hear the shouts from the gallery, meaningless shouts from the gallery, and saw one of the shouters, the soldier in the back of the gallery. The other shouter I did not see.

Q. Then, during my address, and after, the meeting adjourned quietly and peaceably? A. The meeting adjourned quietly, all except the plain clothes men and soldiers, who remained, on the stage, the soldiers shouting, and Sergeant Silverman and the plain clothes men grabbing and hustling an old lady who was handing out a leaflet, and calling her names, and hustling her away, these detectives.

Q. May I ask if Sergeant Silverman was in plain clothes? A. I did not see Sergeant Silverman that night.

Mr. Content: He was in uniform that night. The Government will concede on that night Sergeant Silverman was in uniform.

Cross-examination by Mr. Content.

Q. Did you see me downstairs when you came down to complain to the police captain? A. No; I don't remember seeing you.

Q. I had crutches that evening. A. I don't remember seeing any.

Q. Isn't it a fact that the police captain went right over to the Second Deputy Police Commissioner, Lord, and reported what you told him? A. No; it is not a fact. He gave me a look, and went away and left me.

Q. Wasn't I right there when you were talking to Mr. Lord? A. I don't remember seeing you.

Q. Don't you remember Commissioner Lord and myself making an effort in some way to stop the disorder? A. I don't know; maybe it was so; but I did not follow it.

Q. Have you ever been convicted of a crime? A. No, sir.

Mr. Berkman: Objection.

Q. Were you convicted of an offense in Paterson, New Jersey?

Mr. Berkman: I object.
The Court: Overruled.
Mr. Berkman: Exception.

A. I was working on the picket line, and arrested; there was no charge given, and I was given thirty days, and upon the appeal I was let out. There was no prosecution for the appeal—in other words, I was dismissed immediately.

Q. You say on the appeal you were let out? A. Yes; on the ground there being no charge.

By Mr. Berkman.

Q. You were arrested in Paterson? A. Yes.

Q. By whom? A. By the police.

Q. On what occasion? A. On the occasion of the silk workers' strike in Paterson.

Q. How long ago? A. I think it was 1912 or 1911; I don't remember the exact year.

Q. On the occasion of the silk workers' strike? A. Yes—1913.

Q. Were you there in connection with some newspaper or magazine work? A. I was there as a reporter.

Q. How did you happen to get arrested? A. I was walking down the street in front of the mills, and I had on my old clothes, and the police came along and told everyone to get off the street—no martial law had been declared and there was no rioting—across the street, and I walked down the street, talking and looking around, and the police came and told me to go back, to get off, and I was arrested.

Q. That was your crime in Paterson? A. I asked what the charge was in court, and I was told, "Thirty days."

By the Court.

Q. What paper were you working for at the time? A. I was a reporter for *The Masses Magazine*, New York, and the *Evening Globe*.

The Court: What is *The Masses Magazine?*

Mr. Berkman: That was a socialist magazine.

By Mr. Content.

Q. That was a socialist magazine? A. Yes.

By the Court.

Q. You were not then reporting for the *New York World?* A. No, sir.

Q. Nor for the *Metropolitan Magazine?* A. No; although I did write a story of what happened to me in Paterson for the *Metropolitan Magazine,* and they printed it.

Q. Did you go there on any other business? A. No, sir.

By Mr. Berkman.

Q. Were you at that time in the employ of the *Evening Globe?* A. Yes.

Q. A reporter on the *Globe?* A. Yes.

Q. And the article that you wrote was also published in the *Metropolitan Magazine,* on the silk workers' strike? A. Yes, sir; "The Silk Workers in Prison" was the title of it, I believe.

LINCOLN STEFFENS, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Mr. Berkman.

Q. Mr. Steffens, where do you reside? A. New York.

Q. Are you always in New York? A. Not always; no.

Q. What is your business? A. Reporter and correspondent, magazine writer.

Q. War correspondent and magazine writer?

The Court: He said reporter, correspondent and magazine writer.

Q. For what magazines do you write? A. Well, *Everybody's, McClure's,* the *American*——

Q. You write on social questions, and war? A. Social questions, war, politics, business.

Q. When you speak about conscription do you mean registration?

Mr. Content: Objected to as immaterial and irrelevant.

The Court: Objection sustained on the same grounds heretofore stated.

Mr. Berkman: Exception.

The Court: That will be an exception to both defendants.

Q. Do you know about a paper called *The Blast?* A. Yes.

Q. Do you know whether that paper was first published in San Francisco? A. So far as I know, it was; yes.

Q. In connection with some labor matters? A. Yes.

Q. Well, I suppose, probably being out of the country, perhaps you have not heard about the two numbers of *The Blast* being published in New York; have you heard about that? A. No, sir.

Q. You have been out of the country recently? A. Yes.

Q. May I ask where you were? A. Russia.

Q. Do you think such a trial would be possible in Russia?

Mr. Content: Objected to as incompetent, irrelevant and immaterial, and improper.

Mr. Berkman: Not at all.

The Court: Sustained.

Mr. Berkman: Exception.

By Miss Goldman.

Q. Mr. Steffens, would you be good enough to tell the Court how long you have known me?. A. Well, I reported the first speech you made, I think, in public, in Union Square. I don't like to tell you how long ago.

Q. May I tell you then? A. Yes.

Q. That was in 1893. You have met me, and heard me speak on a number of occasions since? A. Yes.

Q. Have you at any time, in public, heard me say that I would use violence? A. That you would use violence? No.

Q. You have always known me privately, have you not? A. Yes.

Q. In our private discussions about different social matters, and matters of importance, can you

recall hearing me say that I would use violence? A. No; always to the contrary.

Q. Have you ever heard me say I would tell others to use violence? A. As to violence, well, I have heard you say that you were opposed to violence and force.

Q. You have heard me speak on the question of war and militarism? A. Oh, yes.

Q. Will you be good enough to tell the Court my position towards war and militarism? A. You have always been opposed to it.

Q. Do you know the magazine *Mother Earth?* A. Yes.

Q. May I know how many years you have been reading it? A. Well, I think I have read it ever since the first number.

Q. Have you at any time in the magazine read my urging people to commit violence?

Mr. Content: Objected to, as the magazine would be the best evidence.

The Court: That comes under my previous suggestion. Objection sustained. Articles may be introduced, and will speak for themselves.

Q. Then, in your conversations with me, your definite impression was that I neither believed in violence or urged other to commit violence? A. I have always been very clear on that.

Mr. Content: No questions.

By Mr. Berkman.

Q. You have known me for some years? A. Yes.

Q. You met me in California and other places? A. Yes.

Q. It has been mentioned that there is a conspiracy between *Mother Earth* and *The Blast.* From your knowledge of me, and from your knowl-

edge of Miss Goldman, would you believe we would get into any kind of a conspiracy?

The Court: That is not a permissible question.

Mr. Content: That calls for a conclusion.

Mr. Berkman: No.

Q. Would you, knowing the character of both defendants, would you believe that it is possible for us to be parties to any conspiracy?

Mr. Content: Objected to.

The Court: Sustained.

Mr. Berkman: May I ask——

The Court: You may asked him if he knows your reputation for truth and veracity.

Q. Do you know my reputation for honesty and frankness? A. Yes.

Mr. Berkman: I don't want the reputation for that, truth and veracity.

Mr. Content: Ask him does he know your reputation for truth and veracity?

Mr. Berkman: It is beneath my dignity to ask such a question.

Mr. Content: That is the way to prove a character witness.

Mr. Berkman: I don't need a character witness. May I ask what his opinion is of anarchism?

Mr. Content: Objected to.

The Court: We will read it, certainly, if Mr. Steffens ever feels disposed to write an article on the subject, but at the present time it is excluded.

Q. Two persons holding similar opinions on the same social questions may present them—would that constitute conspiracy against conscription?

Mr. Content: Objected to. Mr. Steffens is not a judge of that.

The Court: Sustained.

Mr. Berkman: Exception. That is all.

CHARLES PICKLER recalled by the defendants.

Direct examination by Miss Emma Goldman.

Q. Mr. Pickler, have you known me before the time when you took my first speech in Hunt's Point Palace? A. I never had the pleasure of meeting you before, Miss Goldman.

Q. Do you know my work? A. I did not, except by newspaper reports.

Q. Are you in sympathy with the work? A. No.

Q. Are you an anarchist? A. No.

Q. You are a public stenographer? A. Yes.

Q. And you are connected with what company? A. None.

Q. How did you happen to come to the Hunt's Point Palace to take the stenographic notes? A. I was employed by the S.S. Company to go there.

The Court: They are a stenographic company, are they?

The Witness: No, sir.

The Court: What are they?

The Witness: They are what you call employers of shorthand reporters.

Q. Then, you came there without any knowledge of either the personnel of the speakers, Miss Goldman and Alexander Berkman—you knew nothing about them before? A. Absolutely nothing, Miss Goldman.

Q. You came there in your capacity as a stenographer? A. Merely as a shorthand reporter.

Q. Without any affiliations with the defendants? A. Absolutely opposed to them.

Q. How many words a minute can you take, Mr. Pickler? A. Miss Goldman, that is a hard question. But, I imagine, inasmuch as I have always succeeded in making a satisfactory report, that my speed will perhaps extend up to 225 words a minute.

Q. How many words a minute—wait, I beg your pardon— A. (Continuing) That is, easy work, ordinary, colloquial language.

Q. Now, you have also taken notes at another meeting of the addresses made by myself and Mr. Berkman, have you not? A. Yes, Miss Goldman.

Q. Will you be good enough to tell the Court what meeting that was? A. I reported two meetings. I had the pleasure of listening to you, Miss Goldman, once at the Hunt's Point Palace, and the next one was at Forward Hall, although, as I said before, I do not care at all for your principles.

Q. How many words a minute do you think I am speaking? A. When you reach the peroration, I have no doubt at all, Miss Goldman, that you speak at least 200 words a minute.

Q. Do you think it would be possible for anyone to take my speeches standing up on a table without any support for the book and take it accurately? A. How fast can this person write, and what experience has this person had?

Q. Well, supposing he writes from 100 to 125 words a minute? A. No, and because—I would say, Miss Goldman, it was absurd to assume such a person could report you or anyone else under such circumstances.

Miss Goldman: I think that is all.

Examination by Mr. Berkman.

Q. When did you first see me? A. At the Hunt's Point Palace.

Q. At the Hunt's Point Palace, June 4th, 1917? A. Yes.

Q. Did you ever see me in your life before? A. Never.

Q. And that was the first time you saw Miss Goldman in your life? A. Yes.

Q. You are opposed to our ideas? A. Oh, absolutely.

Q. You have no special reason for not telling the truth? A. Oh, no, no, no—nothing has been paid to me.

Cross-examination by Mr. Content.

Q. Mr. Pickler, what is your estimate of the number of words a minute Miss Goldman spoke at the Hunt's Point Palace? A. Why, varying from 125 to 200 words a minute.

Q. Didn't you say this morning, in response to Miss Goldman's question, that she always spoke at 200 words a minute? A. Oh, no; Miss Goldman is a very deliberate speaker, as a rule.

Q. Very deliberate? A. Very deliberate.

Q. Her enunciation is distinct and good? A. Fine.

Q. She has a good speaking voice? A. Wonderful.

Q. As good as any woman you ever met? A. I think she is the best speaker I ever met.

Q. Now, if she spoke at the rate of 200 words a minute, how did you have time to observe that a lemon was thrown on the stage or any character of missile? A. I did not say she was speaking at 200 words a minute when the lemon was thrown on the stage.

Q. What did you say this morning, when you were cross-examined, over my objection, by Miss Goldman? Didn't you introduce some remark that Miss Goldman speaks 200 words a minute? A. I may have said this, that at times, when Miss Gold-

man has reached a peroration, a climax, she speaks at least 200 words a minute.

Q. Do you mean to say you used the word "peroration" or "climax" in your testimony this morning? A. No, sir.

Q. Didn't you say this morning, as a matter of fact, didn't you interject this, the statement that Miss Goldman speaks at the rate of 200 words a minute? A. I may have.

Q. You seem to have some personal interest in this case, have you? A. None at all.

Q. You seem to have some personal animus against me. A. I beg your pardon, Mr. Content, I have the very highest respect and liking for you, you are a courteous gentleman in every way.

By the Court.

Q. If I understand you correctly, by peroration or climax, do you mean the end of the whole speech or at various times during the speech, when the climax is reached? A. I mean, your Honor, this: Naturally a woman of Miss Goldman's temperament, addressing a public audience, at times reaches a stage in her mental operations, when she begins to think rapidly, and as a result she begins to speak rapidly, and that may have happened fifteen or twenty times; and it means this, that the one who is reporting her must always have the capacity to report up to the maximum of her speed.

Q. And then, at other times, you think the average whould be down to 125? A. Oh, your Honor, at times, I do not suppose Miss Goldman's speeches would exceed 100 words a minute.

Q. Then, what it all comes down to is that depending upon the speaker's personality—in this instance Miss Goldman—there is a peroration a number of times, before he has finished the speech? A. Oh, yes, your Honor.

Q. And that is generally true of all speakers? A. Yes, your Honor.

Q. And it runs in this way, if I gather your testimony correctly, from around 100 words a minute when she is deliberate, and after that reaches 125, and then reaches 200, when the climax or peroration is indulged in? A. Yes, your Honor.

By Mr. Berkman.

Q. Did I understand you that your entrance into this matter was in the interest only of fair play? A. Why, certainly, that is all.

PAUL MUNTER, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Miss Goldman.

Q. Mr. Munter, you are a public stenographer? A. Public stenographer, and also official stenographer to Hon. Peter B. Olney, referee in bankruptcy.

Q. How long have you been a stenographer? A. About twenty years.

Q. How long have you known me? A. Why, I guess four or five years, Miss Goldman.

Q. You say four or five years? A. Yes, about that.

Q. Have you done public—have you reported my speeches or lectures? A. The first important work that you engaged me to do was when you engaged me in the spring of 1914 to report a series of lectures on the modern drama—I believe about twenty in number. Since then I have had, in all, I should say, about ten of your public addresses, at meetings of a political character, so to speak.

Q. I understand you are considered a champion stenographer? A. No, I consider myself a good

stenographer. I have passed number one in the examination for the Supreme Court, in Westchester County, last year, with a rating of 94, so I consider myself a competent stenographer. There are better men—Mr. Pickler is one of them.

Q. Did you find it difficult to take me in my lectures and speeches? A. Harder than most of the persons I have had to report.

Q. It would therefore require an expert stenographer to accurately report my speeches? A. Well, to put it a little modestly, it would require an experienced stenographer, who had had considerable experience in doing public work.

Q. You said you reported a series of lectures on the social significance of the modern drama? A. I believe that was the title.

Q. They were lectures, not speeches? A. No, they were what would be termed in the vernacular, high-brow stuff, a little different kind of language from what you use in political speeches.

Q. Will you please tell the Court whether the lectures you found in those lectures that it was difficult to take me? A. Yes, I can say they were about the most difficult I ever had to take, because you speak easily, you recall many things, and you seem to know all about your subject, and you delivered them at a fairly uniform rate of speed, about a hundred and eighty words a minute, which is very difficult to keep up.

Q. You say you have also reported public speeches, and at meetings? A. Yes.

Q. How did you find taking the speeches then?

Mr. Content: You mean your speeches?

Miss Goldman: My speeches.

A. Well, I would say that you were a little faster than the last witness said. I do not think you ever went lower than 150 words a minute, and I agree with him that your faster moments, which are rather frequent, in them you go up well beyond two hundred words a minute.

Q. Then you can say that unless one is accustomed to taking speeches, public speeches, and being at the same time one who also knows the English language well, that it would be difficult for him to take my speeches accurately? A. Yes.

Q. If you found it difficult to take my speeches accurately, may I ask you if at these lectures you took your stenographic notes when you were standing up? A. No, I have a very comfortable, square table, to sit at.

Q. And you found it difficult even then to take the lectures? A. Yes, it kept me busy.

Q. In your estimation, would it be possible for anyone to report a speech of mine accurately, standing on a table, without any support for his book? A. Well, I dare say there are people who can—I know I cannot.

Q. You could not, as an expert stenographer? A. No, I could not guarantee I had taken three-quarters of what you said in that manner.

By Mr. Berkman.

Q. Mr. Munter, you have taken rather hard stenography, for instance, have you ever taken stenography for patent and technical evidence? A. Very many years.

Q. Good speakers, and all kinds, fast and slow? A. Yes.

Q. And you, as an expert, were employed to take such evidence? A. Yes.

Q. You are thoroughly experienced? A. I consider myself so; yes.

Q. And you have difficulty frequently in taking Miss Goldman's speeches? A. Yes, indeed.

Cross-examination by Mr. Content.

Q. You are paid to take, on behalf of the defendants, stenographic notes of just what occurs at this trial? A. Yes.

Q. You have seen Government's Exhibit No. 32? A. Yes.

Q. That was the paper on which his Honor asked the witness to write for him those three different words? A. Yes, I glanced through it rather hastily.

Q. Take a good look at it (handing same to witness). There is no similarity between any of those three words, in shorthand? A. Not the slightest.

Q. They could not be confused by a good stenographer, I mean in transcribing his notes? A. I should say they could not be confused by an amateur.

By the Court.

Q. Your answer is that they could not be—to get the counsel straight—they could not confuse an amateur, and could not confuse you? A. Yes.

Q. In transcribing the notes into typewriting? A. That is what I mean.

Q. That is right? A. Yes.

Q. Were those three separate symbols, if I may call them such, on Exhibit 32, correctly translated by the words, "register," "conscription," "violence"? A. Yes, your Honor.

Q. Were you at any of these meetings that have been spoken of here, the Hunt's Palace, or the Harlem Casino? A. No, but I was called on to report the one at the Hunt's Point Palace, and because of not being able to take it, I turned it over to the S. S. people, who engaged Mr. Pickler.

Q. You turned it over to the S. S. people, and they hired Mr. Pickler? A. Yes.

Q. But you were not there yourself? A. No, sir.

Q. So it follows, obviously, that you did not hear either of those speeches? A. I did not.

(Whereupon the further trial was adjourned to July 5, 1917, at 10 o'clock A. M.)

New York, July 5th, 1917, 10 A. M.

Trial resumed pursuant to adjournment.

Present:

The Court, counsel and jury, same as before.

The Court: You may proceed, Mr. Berkman.

HELEN BOARDMAN, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Mr. Berkman.

Q. Miss Boardman, where do you live? A. 28 Grove Street, New York City.

Q. What is your occupation? A. I am a research worker, psychological research.

Q. For what organization or company do you work? A. For the Bureau of Educational Experiments.

Q. You are interested in educational matters? A. Yes.

Q. Were you born in this country? A. Yes.

Q. Were your parents born here? A. Yes.

Q. When did your folks come to this country? A. About the year 1640.

Q. You are a good American? A. Yes.

Q. Were you present at the Harlem Casino meeting, the Harlem River Casino mass meeting on May 18? A. Yes.

Q. Did you hear Miss Goldman's speech? A. Yes.

Q. Did you hear Miss Goldman say, "We believe in violence and we will use it"? A. I did not hear that statement.

Q. Did you hear Miss Goldman make any reference to violence or the use of violence? A. None whatever.

Q. Did you hear Fraina speaking there? A. No, I couldn't hear that.

Q. Did you hear Miss Goldman advise or urge people not to register? A. No.

Q. Did you hear Miss Goldman give a reason why she would not advise people not to register? A. Yes.

Q. What was the reason given? A. She said that she did not believe in advising people to act —the substance of her statement was that she believed that every person should act according to the dictates of his own conscience. As I remember it, she made the further point, that she, herself, was not subject to registration, and for that reason also she would not advise people in regard to it.

Q. Did she say she would leave it to the conscience of each one? A. Yes.

Q. To use his own judgment? A. Yes.

Q. Did you hear Mr. Berkman advise or urge people not to register? A. No.

Q. And you did not hear Mr. Berkman advise or urge people not to register? A. No.

Q. Did you hear any other speakers that evening advise people or urge them not to register? A. No.

Q. Did any other speaker inform us that this was a matter of conscience, the people who believe in freedom of conscience? A. Well, the speakers that night, Mr. Berkman, I did not hear all the speakers at the meeting.

Q. I am speaking of Miss Goldman and Mr. Berkman. You did not hear either Mr. Berkman or Miss Goldman advise or urge people in any way not to register? A. No.

Q. Did you recently visit the offices of *Mother Earth?* A. Quite recently.

Q. Can you recall the date approximately? A. About June 7 or 8, I think it was.

Q. Approximately. I don't know the date myself. A. Yes.

Q. Did you see anybody else present there at that time? A. Yes.

Q. Did you see there the reporter who was here, interviewing Miss Goldman? A. Yes.

Q. Did you hear the reporter ask Miss Goldman for a copy of *Mother Earth?* A. I don't remember whether he asked for it, but I know I saw Miss Goldman give him a copy.

Q. Well, that was the June issue? A. Yes.

Q. Did the reporter ask Miss Goldman whether she would advise people not to register? A. Yes.

Q. You heard him ask her? A. Yes.

Q. What did she say? A. She replied she did not advise people in regard to registration.

Q. She replied she did not advise people in regard to registration? A. Except that she advised every person to act as he thought was right.

Q. As each person thought was right? A. Yes.

Q. Were you present at the meeting of the No-Conscription League on May 23rd? A. Yes, sir.

Q. Was it a mass meeting? A. No, sir.

Q. It was an informal meeting? A. Yes, sir.

Q. Where was the meeting held? A. At Miss Goldman's apartment.

Q. Do you know where her apartment was? A. I think it is on 139th Street.

Q. 139th Street, near Broadway. Do you recollect the special reason for calling that meeting? A. Well, I can't just say what the chief reason was.

Q. Do you remember we had a mothers' meeting for June 4? A. Yes, sir.

Q. Do you remember that that meeting of May 23rd was called to arrange for that meeting? A. Yes, sir.

Q. You remember originally we intended to have Madison Square Garden? A. Yes, sir.

Q. And the meeting of May 23rd was to arrange the mass meeting in Madison Square Garden? A. Yes, sir.

Q. Do you remember that we talked about the mothers' meeting? A. Yes, sir.

Q. Do you know the reason it was changed to a general meeting? A. Yes, sir.

Q. What was the reason? A. Because it was decided that merely a mothers' meeting would be to limit the attendance.

Q. And that only women would come? A. Yes, sir.

Q. If we called a mothers' meeting; we wanted men as well as women? A. Yes, sir.

Q. You remember we could not get Madison Square Garden? A. Yes, sir.

Q. And the meeting was changed to Hunt's Point Casino? A. Yes, sir.

Q. That is the June 4th meeting. Do you remember whether I was present at the meeting, the informal meeting of May 23rd? A. Yes, sir.

Q. Was Miss Goldman there? A. No, she was not.

Q. Do you know the reason she was not there? A. She was out of town, I think, in Springfield.

Q. Massachusetts or Illinois? A. Springfield, Massachusetts.

Q. Do you know whether any message was received from Miss Goldman at that meeting? A. A letter from her was read.

Q. It was read? A. Yes, sir.

Q. What did the letter concern; what subject directly? A. The subject of conscription and registration.

Q. And what did Miss Goldman say about registration?

Mr. Content: I object to it on the ground the letter is the best evidence.

The Court: The objection is sustained.

Do you recollect what the letter——

Mr. Berkman: Well, the letter is in evidence.

By the Court.

Q. You heard a letter read? A. Yes, sir.

Q. Who read it, do you remember? A. I am not certain, I think Mr. Sachs.

Q. Well, it was read, the letter was read? A. Yes, sir.

Mr. Berkman: I would like to know from the Court whether I can ask the witness if she heard that letter read?

Mr. Content: The letter is the best evidence.

The Court: Have you the letter?

Mr. Berkman: We have not. You remember, you instructed Miss Fitzgerald to get the letter from the District Attorney; the letter was lost, she could not find it. It seems to me that the letter disappeared, it was in the possession of the District Attorney.

Mr. Content: You have to prove that statement.

Mr. Berkman: I can't prove that.

The Court: Well, you may recall her later, after you prove that letter. You may suspend on this particular line and call her later on that.

Mr. Berkman: We will suspend with her just now.

The Court: Do you want to put Miss Fitzgerald on?

Mr. Berkman: Yes, sir. I want to ask Miss Fitzgerald if she looked for that letter, which she did.

Mr. Content: And could not find it.

Mr Berkman: And we want to put Miss Fitzgerald on the stand.

Mr. Content: Did she find the letter?

Mr. Berkman: She could not. We asked Miss Fitzgerald later for the letter, she could not find it, it was not there.

The Court: Then let Miss Boardman step aside until the formal proof is put in.

MARY ELEANOR FITZGERALD, a witness recalled on behalf of the defendants, having been previously duly sworn, testified further as follows:

Direct examination continued by Mr. Berkman.

Q. Miss Fitzgerald, do you remember the meeting of May 23? A. I do.

Q. It was originally a preliminary meeting? A. It was a preliminary meeting to the mass meeting of June 4.

Q. It was a preliminary meeting to the mass meeting of June 4? A. Yes, sir.

Q. Where was the meeting held? A. It was in the apartment of Miss Goldman, 603 West 139th Street.

Q. Was I present at that meeting? A. You were.

Q. Was Miss Goldman present at that meeting? A. She was not.

Q. Do you know where Miss Goldman was? A. She was lecturing at Springfield, Massachusetts.

Q. Was there any word received from Miss Goldman at that meeting? A. Yes, sir.

Q. Who received it? A. I received a personal note from Miss Goldman, and a statement enclosed with that letter, which I copied, and I was asked to have it read at the meeting of May 23rd.

Q. Was there a request that her statement be read at the meeting of May 23rd? A. Yes, sir.

Q. Did you copy the statement, and how? A. On the typewriter; I made a typewritten copy of it.

Q. You made a typewritten copy of the statement? A. Yes, sir.

Q. And what did you do with that statement; did you submit it to the meeting? A. It was read at the meeting.

Q. That statement was read at the meeting? A. It was.

Q. What became of that statement after the meeting? A. After it was read at the meeting, and the subject discussed, I took it with other papers and put it in my desk.

Q. You put it in your desk? A. Yes, sir.

Q. Until when? A. Until the day of the arrest, yours and Miss Goldman's arrest on June 15th.

Q. And what happened to this statement on June 15th? A. Well, the officer, McGee—I learned since I am in the courtroom, was the man who took it from my desk.

Q. Officer McGee? A. I did not know his name at that time; but since he was on the stand I recognized him as the one who took the materials from the drawer of my desk, and that statement with a few other documents.

Q. Was Officer McGee with Marshal McCarthy? A. Yes, sir.

Q. He took the statements? A. He took this statement of Miss Goldman's with other papers from a drawer of my desk, a typewriter drawer.

Q. You saw him take it? A. I did.

Q. You were standing right nearby? A. I was standing right by him; I asked for it, to give it to me, and he would not give it to me.

Q. What did he say? A. He said he would take everything they wanted.

Q. Did you see the statement since? A. I have not.

Q. The Court instructed you a couple of days ago to look through the packages taken from the offices by the District Attorney, by the Marshal? A. Yes, sir.

Q. Did you look for that statement there? A. I did.

Q. Did you find the statement? A. I did not.

Q. What has become of it so far as you know? A. It disappeared; it was not with the papers in that room.

Q. You did not find it there? A. I did not find it.

Mr. Berkman: Well, we demand that the statement be produced.

Mr. Content: I do not believe there is such a statement.

Mr. Berkman: I object to the District Attorney making such a remark.

The Court: I did not hear you.

Mr. Berkman: We demand that the statement be produced; that the Court directed Miss Fitzgerald to get among the papers taken by your officers, Marshal McCarthy and Officer McGee.

The Court: Have you the statement, Mr. District Attorney?

Mr. Content: All the papers are in that room; I am informed Miss Fitzgerald looked through them hurriedly.

Q. Were any officers with you when you looked for the statement? A. One of the officers for the courtroom went with me, I suppose; there was an officer unlocked the door, the two men were in the room.

Q. Did they help you look for the statement? A. They were in the room while I was looking. I spent half an hour looking through the papers; I found a basket of things that had some of the papers coming from my desk, but in that basket was

not the statement. I looked through the last package in the room; I spent half an hour in the room.

Mr. Berkman: We want the statement produced.

Mr. Content: You may want it, I haven't got it.

Mr. Berkman: Is the District Attorney quite sure the statement is not among the papers here?

Mr. Content: It is not among anything I have. I have never looked through these papers; I am perfectly willing to accord you any access you want to them.

Mr. Berkman: I want to call the attention of the Court to the fact that this is a most vital statement.

Mr. Content: You may look for it if you choose; I will not; I refuse to look for it myself.

The Court: There is no obligation on the District Attorney to look for it; my suggestion is somebody be assigned to Miss Fitzgerald as heretofore, and she can spend the whole day looking for it.

Mr. Content: There is no reason for destroying any papers.

The Court: Let me ask you a question. Now, as I understand it, your testimony is that the letter was received by you from the defendant, Miss Goldman?

The Witness: Yes, sir.

The Court: Was a letter and a statement enclosed from her, or was the letter the statement?

The Witness: A personal note to me; with a statement giving her position on registration that was to be read at this meeting. This meeting really was to discuss the position of the League on registration, besides arranging for the June 4th meeting.

The Court: Now, was this statement a physical, separate paper?

The Witness: It was separate from the little note, and then I copied it.

The Court: That was in her handwriting?

The Witness: That was in her handwriting.

The Court: What did you do with that personal note and the statement enclosed with that personal note?

The Witness: I copied the statement; I made a typewritten copy of her statement, and then I tore up the note, her original note and statement, too.

The Court: Then as the matter stands, you tore up the original note, and you tore up the original statement?

The Witness: Yes, sir.

The Court: So that they are not in existence by reason of your tearing them up?

The Witness: Yes, sir.

The Court: Now, you made a typewritten copy of this statement?

The Witness: Yes, sir.

The Court: Where did you make it?

The Witness: You mean where I did the work?

The Court: Yes.

The Witness: In the office of *The Blast*, 20 East 125th Street, on the typewriter.

The Court: What day did you receive this note from Miss Goldman, enclosing the statement?

The Witness: I think it was on the morning of the 23rd of May.

The Court: What hour was the meeting?

The Witness: The meeting was called for eight o'clock.

The Court: In the evening?

The Witness: In the evening.

The Court: Some time during the day you made this typewritten copy?

The Witness: Yes, sir. It was in the afternoon—after receiving the letter from Miss Goldman, I immediately made a copy, and I tore up her note and the original statement; I had my typewritten copy to be read at the meeting.

The Court: Now, after you read at that meeting that night, where did you go; I mean by that, did you go to the No-Conscription League headquarters?

The Witness: I stayed at Miss Goldman's that night.

The Court: You stayed at that apartment that night; when did you go to the No-Conscription League headquarters?

The Witness: The following morning.

The Court: Did you have the statement with you?

The Witness: I did.

The Court: Where did you put it?

The Witness: I put it in the drawer in the typewriter desk.

Mr. Content: I have been called upon to produce this letter. Before the trial began, it was last Saturday morning, around ten A. M., Mr. Weinberger, I think was their attorney then, and he called me up and he said he would have to serve me with a notice to produce a letter from Miss Goldman to Miss Fitzgerald. I said, he did not need to go to the trouble to serve a notice to produce anything, that anything that I had, he was welcome to. He asked me if I would look specifically for a letter from Springfield, from Miss Goldman to Miss Fitzgerald. I sent Detective Sergeant Barnitz, who is more familiar with the files than I am, and he could not find that letter. I never knew

about this copy of the statement. Mr. Weinberger asked me to produce a letter. Now Miss Fitzgerald says the letter is destroyed; that is what I have been looking for, and I have had Detective Sergeant Barnitz looking for, assiduously.

Now Mr. Berkman is requesting that a man in my physical condition should go to the room, go through the files when everything is at their access. We have nothing to hide. We are asked to produce a letter, and it now appears the letter was destroyed by the witness. I want you to understand I have made an effort to locate it in the files. I can't produce something I have not got.

Mr. Berkman: I did not mean the District Attorney himself should now look for it. I mean it should be done.

The Court: There will be no difficulty about it. Now you say that the drawer containing these different papers that you have outlined, was taken by a man that you know now as Officer McGee, who was on the stand the other day for a few minutes?

The Witness: Yes, sir.

The Court: Now you could recognize it at once, I assume?

The Witness: Yes, sir; I could.

The Court: There will be no difficulty at all. You can just arrange, Mr. Content, to assign somebody and allow Miss Fitzgerald to go through, as she had the opportunity to do the other day, and spend sufficient time in looking for it. Let her go through everything there is in the place.

Mr. Content: Absolutely.

Miss Goldman: If Miss Fitzgerald is taken off now to look for the letter, I would be unable to go on with her testimony, inasmuch as the most of the witnesses, at least

a number of them, have been present when the letter was read, and are corroborative; it is evidence that the letter was received, giving my position on registration. I really can't make it possible to go on with the testimony right now.

Mr. Content: If your Honor wants to receive secondary evidence on that, I suppose you will; I do not care much about it.

The Court: I do not want to delay the trial, nor do I want to deny the fullest opportunity to have any testimony produced in regard to any matter which is material to the defense, even though such production is not strictly in accordance with the technical rules of law. Now, I will let you ask this witness here any other questions as to the contents of that letter; then, when that shall have been done, at some convenient time before the trial is over—if it is necessary for her to stay, or this evening, she may search for this letter; if it is there, it is there; if it is not there, it is for the jury to say whether or not on all the evidence, such a copy was taken or was not taken; existed or did not exist.

Miss Goldman: That is satisfactory.

Juror No. 4: May I ask a question? The originals I understand from you, the statement and the letter were destroyed, the original?

The Witness: The note I received from Miss Goldman I did destroy, that is true.

Juror No. 4: The letter also?

Mr. Content: The statement was in Miss Goldman's handwriting?

The Court: The juror wants to know whether you destroyed both of them, the note and the statement.

The Witness: I did.

Juror No. 4: Except that you made a typewritten copy——

The Witness: When I made the typewritten copy, I simply tore up the letter and put it in the wastebasket; I did not know I was going to be a witness, because if it was necessary in this way, I would have saved everything. The only thing I needed was the statement; I had a copy of it; I tore up the letter and put it in the wastebasket, unfortunately.

Juror No. 4: That is your usual way with communications and letters that you receive; you tear them up——

The Witness: If I have no further use for it.

Juror No. 4: That is the way you transact your business; you tear up the originals after making a copy of the statement?

The Witness: No, it is not. I did not have any further use for it, at least I thought so at that time. When I made my copy to read to the meeting, I destroyed the other. I have that, what I thought it was necessary to keep, I kept.

Mr. Content: Will your Honor note I am only asked to produce the typewritten copy?

The Court: Yes.

By Juror No. 4.

Q. Did you have any particular reason for taking a copy and tearing up the original? A. The reason I took a copy was so that it could be easily read at the meeting; Miss Goldman's handwriting is not easy to read except for those who are used to her writing; it is not easy to read. I made a typewritten copy so as to be easy to read. She took specific instructions to have it read at the meeting, so far as I knew she was not to be present. She was at Springfield, Massachusetts, lecturing.

It was a perfect, natural thing, that I made a copy of the statement which was to be read, put it in shape so that it could be read easily and rapidly. I copied it, and then I kept a typewritten copy with my other documents.

Q. That is what I mean. The typewritten copy could be read easier than the original? A. Yes, sir.

Juror No. 10: Who read it at the meeting?

The Witness: I read it.

Juror No. 10: Are you acquainted with Miss Goldman's handwriting?

The Witness: I am, yes; sir. I did not understand I was to read it at the meeting. I did not know who might read it, but it was to be read there.

By the Court.

Q. Now, will you repeat, not your own conclusion of the letter, but repeat so far as your memory serves you, the wording of that letter? A. Well, I could not give you the wording of the letter from beginning to end, it was about a page——

Q. I mean, give your best recollection. A. It was a page and a quarter, a full typewritten page, the ordinary typewritten page, it was a full page, and about eight or nine lines on the other page; and in this way she starts, "Dear Friend" and in this letter she gave emphatically and definitely —gave her position on the conscription.

Q. That is what I am asking you. A. I can give these lines of it: "That I do not advise or urge young men to refuse to register"; those two lines definitely and absolutely were written; and another statement following that, "As an anarchist, I could not do that, because that would be taking the same position as the Government, by telling someone to do this or do that; I refuse to advise

young men to refuse to register, it must be left to the individual."

Q. Was there anything in there about conscription? A. I do not remember whether there was. I do not think that there was anything about conscription; and then something regarding the meeting we were to hold, the mothers' no-conscription meeting.

Q. Your recollection is there was nothing about conscription? A. My recollection is there was nothing about conscription any more than about the meeting we were to hold on June 4.

Q. How many people were in that meeting at Miss Goldman's apartment? A. On May 23rd? Well, there were at least twenty-five people.

Q. Were they all known to you? A. No, sir.

Q. Most of them? A. No, sir.

Q. Do you know how they came there; what notice they got? A. I know their faces were familiar because they attended other meetings; I did not know them by name.

Q. Were all the faces familiar? A. No, not all the faces were familiar, because on that evening, May 23rd, I had sent out notices to the different anti-militaristic organizations, asking them to send delegates to the meeting, with the object of discussing the subject of registration.

Mr. Content: On what date?

The Witness: This was May 23rd. I sent out notices of the meeting to the anti-militaristic organizations, asking them to send delegates to this meeting, as we wanted to get together a little closer and discuss the work they were doing and the work we were doing.

The Court: Who acted as chairman at that meeting?

The Witness: I think Mr. Berkman was the chairman at that meeting.

The Court: Was there anything said as to who was there? Any question asked whether there were delegates from the blank blank association, or whatever the names of some of the organizations were?

The Witness: Yes, sir.

Q. Let us hear about that? A. There was a delegate from the Emergency Peace Federation.

Q. Who was there? A. Rebecca Shelley; Miss Boardman came as a delegate from the Union of Democracy—I do not know its full name—then there was a gentleman from Brooklyn, I understood he was representing five thousand conscientious objectors; he stated that evening his name was Pilkin, I think he gave us his name, I did not see him before.

Q. You knew, if I understood you correctly, that there were enough people who were strangers—those persons who were in the No-Conscription League—were to be present, or rather you expected a number of people? A. I asked these delegates; I never met them before.

Q. Do you know whether they knew Miss Goldman or not? A. Most of them did know Miss Goldman.

Q. Did you know? That is my question. A. Yes, I knew that several of them knew Miss Goldman. You mean the ones coming from the organizations?

Q. Yes. A. I knew some of them knew her.

Q. When you typed this statement and tore up the original, was it your intention to read the statement that evening? A. For me to read it?

Q. Yes. A. No.

Q. Was it your intention it should be read? A. Certainly.

Q. Did it occur to you at all that tearing up the original, some person at that meeting might want to see the original to make sure it was Miss Goldman who said it? A. It did not occur to me,

your Honor. In our organization our words are believed.

Q. I understood you—— A. Pardon me one minute. If Mr. Berkman or Miss Goldman or any of the others of the No-Conscription League would say they had a statement from Miss Goldman, our words would be taken, would be believed.

Q. I understood so, that is the reason I asked you the question. Were the invitations sent to some persons who were connected with other organizations as well as to your crowd? A. Our own crowd—the understanding from the meeting before was that there would be a meeting held—in the office, someone sent notices, someone notified in the meeting previous to May 18, and then what I told you, I did write notices to the different anti-militaristic organizations, asking them to send delegates, and they did.

Q. Have you got a copy of those notices, or did you keep a copy of them? A. Yes, there was a copy; I think that was also taken with the—I think that was one of the copies in the drawer of my desk.

Q. When did you write that, write the notices? A. How many days before the meeting of May 23rd? Well, about two or three days before.

Q. When was the 23rd meeting decided on? A. Well, I think from the—when we had a previous meeting, I know that was—when we had arranged it, we announced a date from the previous meeting of a meeting, and decided on a date.

Q. What do you mean by the previous meeting? A. On the 16th of May we had a meeting; that was before the 18th of May.

Q. The 16th of May; did you then arrange for the meeting on the 23rd? A. Well, I think we did, yes, sir.

Q. What was the meeting to be for? A. I do not remember whether—I know on the 23rd meeting we said we would meet on the 30th.

Q. I am not asking you about that. I am trying to find out why the meeting of the 23rd was arranged, by whom, and what for? A. It was arranged by the No-Conscription League.

Q. That does not mean anything at all to me. I mean the person? A. I sent out the notices.

Q. But somebody must have said something, or somebody must have moved, or somebody must have said that persons should be invited to the meeting of the 23rd of May? A. After the meeting of May 18th there were a few of the League members that met after the meeting, while we were at the——

Q. Where? A. In the room where we counted the collection, it was decided we would have another meeting.

Q. Was it then arranged as to date? A. I do not know whether it was then arranged as to date.

Q. Who arranged the date, do you know? A. I think I did. I think I just said we would have a meeting at a certain date.

Q. When did you arrange that? A. I can't tell just now how I came to make the date.

Q. When did Miss Goldman leave for Springfield? A. I think she was away at Springfield on May 22nd or the 23rd, as I remember it, and she left New York on the 21st. As I remember it, her dates were the 22nd and the 23rd.

Q. She left New York on the 21st then? A. I think so now.

Q. She left and was absent anyway on the 22nd? A. She was absent on the 23rd.

Q. Was she absent on the 22nd? A. She was absent on the 22nd, the 22nd and 23rd, to give a lecture at Springfield.

Q. Was she absent when the date was arranged for the 23rd meeting? A. I think she was. I think before she went away for her lecture—I am not sure, we arranged that meeting, and then I understood we were to have that meeting on the 23rd,

and she wrote me this letter, asking me to have it read.

Q. Are you able to state definitely when the date, May 23rd, was selected? A. By that do you mean do I know the very day on which it was arranged?

Q. The very day it was arranged to hold the meeting on May 23rd at Miss Goldman's apartment? A. Well, I am afraid I could not say just the day; I know it was just a few days before she left.

Q. You can't give us the date. Now, can you give us the occasion when it was decided to hold the meeting; where was it? When was it decided, or where was it decided? Was it decided at the meeting of the No-Conscription League, at the end of the Harlem River meeting? A. It was decided at the office of the No-Conscription League.

Q. When? A. Before she went to Springfield for her lecture.

Q. Did she state whether or not she was to be absent on the 23rd day? A. She did.

Q. Did she at that time write anything and give it to you? A. Not at that time; she wrote going on the train, or wrote after she reached Springfield, so that I got it on the 23rd day of May.

Q. May 23rd was the meeting in Miss Goldman's apartment? A. It was originally called for 125th Street, but on account of Mr. Berkman's foot, the people were sent down to Miss Goldman's apartment.

Q. You mean sent up? A. Sent up.

Q. By that I mean sent uptown? A. Yes, sir.

Q. Now, you stated Miss Goldman was away on the 23rd? A. On the 22nd and the 23rd, if my memory——

Q. Now, somewhere between the 18th and the 22nd the meeting was arranged? A. It was.

Q. You say it was arranged at the No-Conscription League office? A. Y[illegible] sir.

Q. Who was present? Well, was Mr. Berkman there? A. I do not know whether he was—he was not. No, he was not.

Q. Was Miss Goldman? A. I think Miss Goldman and myself talked the matter over, and that night, that I talked with Miss Goldman about having some of the delegates over from these other organizations, coming in and talking over things with us, so that we would know what they were doing and they would know what we were doing.

Q. Was the meeting arranged by you and Miss Goldman? A. That meeting was arranged by Miss Goldman and myself, as I remember it.

Q. Anybody else? A. I do not remember anybody else now.

Q. How did you notify those persons who were present as delegates from these other organizations? A. By letters, by cards; some that were in the office were simply told by word of mouth there would be a meeting.

Q. Now, have you any recollection what these notices said? A. A meeting of the No-Conscription League will be had May 23, at 8 P. M., at—that is about all there was to it.

Q. There was nothing in the notice disclosing the nature of the business that evening? A. Nothing in the notice.

Q. What it all amounted to was a notice simply that the No-Conscription League would hold a meeting on May 23rd? A. Yes, sir.

Q. Now did the notice say to meet at Miss Goldman's house? A. No, sir. The notice said to meet at 20 East 125th Street.

Q. Did the people come there then? A. The people came up to the office at 20 East 125th Street, and there was a young man left at the office to send them to 603 West 139th Street.

Q. What was his name? A. Carl Newlander.

Q. Now, going back to the statement of which you made a copy, this statement enclosed in Miss

Goldman's letter to you; have you now stated in substance in response to the Court's question, all that that statement contained? A. You asked if I stated—I have stated in substance all that notice of Miss Goldman's—rather the statement, contained.

Q. Was there any reference in the letter to the Harlem River meeting? A. No, sir.

Q. Was there any reference there to the so-called mothers' meeting—is that correct? A. That is correct.

Q. Was there any reference in there to the meeting? A. No, sir; not that I know of. It was giving her position emphatically on registration, and it was—and about the matters of the No-Conscription meeting, we had planned for Madison Square Garden, and we were unable to get the Garden after it was promised to us.

By Miss Goldman.

Q. Miss Fitzgerald, you have known me for quite some time, have you not? A. Yes; Miss Goldman, I have known you for nine or ten years.

Q. You have corresponded with me on a number of occasions, have you not? A. I have.

Q. Isn't it a fact that my nearest friends even find it difficult to read my writing? A. Well, yes.

Q. Isn't it a fact that we can never send original copies of what I write by hand to a printer? A. That is true, you cannot.

Q. Isn't it a fact that whenever a statement is to be read it must be first typewritten? A. Absolutely.

Q. Then the reason for typewriting this statement which I wrote on the train going to Springfield——

The Court: You may ask about the statement which she received.

Q. The statement which you received, you received on the 23rd, did you not? A. That is my best recollection, I received it the day of the meeting held in the evening.

Q. Then the reason for typewriting the original was really the fact it is very difficult to read my handwriting? A. It is difficult to read your handwriting.

Q. Isn't it also true, Miss Fitzgerald, that whenever my original statements or articles are typewritten, isn't it a fact that the original is always destroyed? A. Yes.

Q. Now, Miss Fitzgerald, about my handwriting, do I write small or large? A. You write a large, strong handwriting.

Q. Do I use up little paper or a great deal of paper? A. You use a great deal of paper.

Q. Now, in the original statements or articles or whatever is sent to be read or to be published, you said that the main purpose, the main reason is my handwriting is difficult to decipher? A. Yes, sir.

Q. Let me also ask you, whether it is not also because it would take quite a large building to hold all the papers? A. That is true; our office is small.

Q. Then really you destroyed—— A. May I add something right here to the question—why, right here where I was asked wouldn't it take a large building, I wanted for the benefit of this jury to say, when he asked if it my custom to tear up all the things—it would take a lot of files and fill up the place to no purpose. I said to him, unless it was necessary to keep them, it was my custom to tear up things that we have no further use for, and I did keep a typewritten copy of what I felt we had use for. I felt you doubted my statement.

The Court: You can ask the question direct, Mr. Juror.

By Juror No. 4.

Q. This was not of enough importance, to retain Miss Goldman's original, was it, the original statement or the original letter; you disregarded that and you simply made a carbon copy, you made a typewritten copy? A. I made a typewritten copy. I stated I had no thought at that time I would have to be up on the witness stand to be cross-examined regarding the statement. If I thought of all of this I would have the original, I would have everything.

Q. May I ask you one more question? Why did you memorize so thoroughly certain lines of this letter in that regard? A. It was not memorized.

Q. Nothing occurred to you to do that thing? A. The purpose of her sending that statement back was to have it read at the meeting; it was her position regarding registration; I have given our position, and if there is——

By Miss Goldman.

Q. Miss Fitzgerald, have you stated here why the meeting on the 23rd was decided upon, why I suggested a meeting on the 23rd? I am not sure whether you did or not, because it is difficult to hear you back here. Have you stated it? A. I stated it was for the purpose of arranging this mothers' no-conscription meeting, and also for the League to clarify its stand or to make definite its stand on the subject of registration. I explained to the Court that previously I sent out notices to the different anti-militaristic organizations, so that their delegates would be present, and could all talk together on the subject.

Q. Now, between the 18th of May and the 23rd, or rather the 22nd, when I left for Springfield, did I or did I not talk to you on this issue? A. You did.

Q. Of my own stand? A. Yes.

Q. And can you approximately give the gist of our numerous conversations, what stand I took? A. I have in my statement to the Court; that is really the gist, that you were very emphatic every time we have discussed it, and in the statement that you sent from Springfield you said that you would not take it upon yourself to advise the young men not to register or to register, that it must be left to the individual, and insofar as you would not come under the—you would not be punished—if you did not come under the registration law, you would not take it upon yourself to tell other people what to do, that would be taking the attitude of the Government. No; Miss Goldman, that is as briefly as I can state, that is your statement at that time.

Q. Naturally, since you did not memorize everything, you can't give it verbatim. Now, this meeting took place on the 23rd and the statement was read? A. It was.

Q. Just a minute. In the note I wrote you, inclosing the statement, have you any recollection of what I said should be done with the statement? A. You asked me to make a typewritten copy of it and have it read at the meeting, which I did.

By Mr. Content.

Q. You destroyed that note? A. I did; I explained, Mr. Content, I tore up the original note.

By Miss Goldman.

Q. And then the letter was read? A. The letter was read.

The Court: Before you leave that letter, let me ask you a question.

The Witness: The statement was read.

The Court: Of course, the statement.

By the Court.

Q. I understand—if I am in error, I wish you would correct me—there was something in the letter to the effect that she was an anarchist, and that as to the question of registration the writer could not do that, that is to say, could not advise persons? A. Could not say do this or do that.

Q. I mean, could not do this or do that? A. Yes, sir.

Q. If I understood you correctly, it referred to the general position of the federation, not merely as to registration, but as to any other act having to do with the conduct of other persons? You understand the question? A. I do not.

Q. When you said Miss Goldman said, you recollect, as an anarchist, she could not say, or words to that effect, whatever it was, do this or do that, did that refer in the letter solely to registration, or was that a general statement? A. She was referring to registration in the sense as used, she was referring to the specific thing of registration.

Q. As you recollect it, the letter was, or the expression was limited to registration; that was a pronouncement of the general principle of anarchy? A. It was both; it was the principle of anarchism and also was used in connection with her statement regarding registration, advice on registration.

Q. If I understood you correctly, the principle is that there is not to be any advice or suggestion on any given subject? A. And no coercion.

Q. I said advice; coercion is another matter. A. You are asking me now as an anarchist on certain things.

Q. Yes, for what you have brought out before. A. As an anarchist, each individual must decide his own acts for himself. If your Honor will let me tell you this, there wasn't a day but what twenty-five or thirty young men came up to our office and asked her advice about registration——

Q. I did not ask you that. A. I want to tell you.

Q. Just confine yourself now directly to the stand that the League took. A. I would say there were some young men from the District Attorney's office came there, and they can tell you, that somebody had been advising young men to register or not to register, and it was a matter that must be left to their own individual consciences. That was definitely decided at the May 23rd meeting, it was said in our previous meeting of May 18.

Q. Was that merely said in regard to the draft? A. The subject of the draft was not up.

Q. I mean, was that merely said in regard to the draft? A. The subject of the draft was not discussed at any of our preliminary meetings; it had not come up, we had not reached that stage at that time.

Q. Are you quite sure about that? A. The general stand of conscription—personally, I am against it.

Q. Wasn't there a good deal of discussion on the night of the 16th of May?

Mr. Content: The 18th.

Q. No, the 16th. A. You mean the 16th, the little preliminary meeting we had?

Q. Yes. A. The 16th, that was before the 18th meeting.

Q. Before the bill passed? A. Certainly there was discussion about it; there was no advice given to anybody.

Q. You were present on the 18th? A. I was present on the 18th.

Q. Did you hear the speeches? A. Not all of them, as I told you I was——

Q. Was there any advice given by either of the defendants on that occasion on any subject? A. At all our meetings——

Q. Please answer that single question; it is about as simple a question as I can frame. You heard the speeches. A. I did not hear the speeches.

Q. Did you hear Mr. Berkman speak? A. I did not. I heard Miss Goldman.

Q. Did you hear Miss Goldman? A. I was standing on the stage.

Q. Were you in Hunt's Point Palace? A. Yes, sir.

Q. Was advice given there, do you know? A. There was a statement giving their position on conscription and different things; there was no advice telling people to do this or not to do this.

Q. You are quite sure of that? A. I am, I feel I am, sure.

Q. Did you hear the speeches at the Hunt's Point Palace? I mean of the two defendants? A. Yes, I was in position.

Q. Did you hear everything? A. I heard their speeches.

Q. Is it your recollection then, that nothing on that occasion was said in the way of advice or counsel to other persons in regard to their registration, or what you call conscription? A. No; what I call registration or conscription.

Q. I say in regard to either registration or what you call conscription? A. As I remember, at this meeting they were definite—they took a definite stand, they stated emphatically their position on this whole thing: "I am not in a position to say on any of those subjects, do this or do that."

By Miss Goldman.

Q. Miss Fitzgerald, you said you have known me for a number of years? A. I have, Miss Goldman.

Q. You have heard me speak a great many times? A. I have.

Q. Have you at any time heard me say to people, this or this or that must be their stand? A. I never have, Miss Goldman, entirely to the contrary.

Q. Approximately, can you give the Court the outline in a few words, what my emphatic position is?

Mr. Content: On conscription.

A. Your position on conscription, that as an American citizen we think it violates the rights and liberty of the individual.

Q. In other words, it always gives my position? A. Your position.

Q. Not to tell others what to do? A. What to do.

By Mr. Berkman.

Q. There were other people present at the meeting of May 23rd? A. Yes, sir.

Q. Who spoke, too, at the time? A. Yes, sir.

Q. And those people heard the letter read, if it was read? A. Yes; they all heard it.

Q. Was a representative of the Union Against Militarism?

Mr. Content: She already answered this; no reason for his leading any further.

The Court: That is the Emergency Peace League, the Union for Democracy, one representative represented five thousand conscientious objectors from Brooklyn?

The Witness: Yes, sir.

Q. At this meeting, the preliminary meeting called to arrange for the mothers' meeting——

The Court: She has been all over that. Do not ask that question.

Q. I wanted to know whether it was formal or informal? A. Informal.

Q. Could I, for instance, call a meeting if I felt like it? A. Yes, sir.

Q. I could. Did I have to consult anyone? A. No, sir.

Q. Any of the active members of the organization are authorized to call meetings? A. Yes; they would have to notify me, and I would go about it. I can, perhaps it would be better to make that clear; any member of the League could call for a meeting, they simply let me know about it.

Q. Informal affairs? A. Informal affairs.

Q. Were there any minutes taken in the meeting? A. None; except the things that we wanted, like getting out bulletins, or getting up a manifesto, or getting up lectures; those things were jotted down.

Q. They would be instructions to the secretary? A. Yes, sir.

Q. Minutes of the meeting? A. No, sir.

Q. Because they were only informal affairs? A. Because they were only informal affairs.

Q. Was the meeting of May 23rd called for two special purposes? A. It was.

Q. State the purposes? A. To discuss the subject of registration, and the plans for the other meeting, the mothers' no-conscription meeting on June 4.

Q. Did we take any definite stand on registration at that meeting? A. We did.

Q. That was the first meeting at which the League took a definite stand? A. Yes, sir.

Q. What is the stand taken by the League finally? A. The stand taken by the League was not to advise or urge young men not to register; would not tell them to register or not to register, it was left to the individual, and at that meeting there were various opinions expressed, some for registration and some against registration; but the stand of the League, and they decided at that meeting, after the letter of Miss Goldman's was read, was that the League as a league would not advise people to register or not to register.

Q. That is the position taken after the reading of Miss Goldman's letter, and after discussion? A. After reading Miss Goldman's letter and the discussion; there was quite a lengthy discussion; different delegates were there, expressed themselves, and our own people expressed themselves, and the stand of the League after all this was they would not advise people to register or not to register; it was an individual matter.

Q. The papers you kept in your office; did you keep all the papers received or letters received for the last year? A. I did not; no, sir.

Q. You only kept what you considered papers to be of use in the future? A. Yes, sir. Just let me explain that. I have just moved the last files, etc., from San Francisco to New York; there were a great many destroyed, no use for them, just filled up the space; and I decided not to keep everything, to keep in the office, unless I considered it of importance.

Q. Your custom was not to keep these letters if they were useless, so far as you know? A. If I considered it of no importance after the business was attended to, I simply destroyed the letter so as not to fill up the files of the office. I know business houses keep whole rooms full of letters. If we would have something new in the office, simply put it away.

Q. The no-conscription business is constructed not as one big corporation? A. No, sir.

Q. The space is rather limited in our office? A. Yes.

Q. Did you hear me while I was in the office of *The Blast* call up various people, informing them about the meeting of May 23rd? A. You did.

Q. And those people you did not consider it necessary to write? A. Not the ones, I said, we told; those came in the office or called up, some were written to; some, I think, some of the delegates are in the room now; they received letters from me, asking them to come.

Q. Approximately, was there a meeting on May 9 of the No-Conscription League? A. It was our first meeting.

Q. Do you remember what kind of a day it was, Sunday, Monday, Tuesday, etc? A. May 9, Wednesday, I think.

Q. Was May 23rd a Wednesday? A. Yes, sir.

Q. You can find out from the calendar; I do not remember myself, I have no idea about the matter.

Mr. Content: You are not on the witness stand.

Q. The first meeting of the No-Conscription League was on May 9, probably a Wednesday, and the next meeting May 23rd—— A. The next meeting was the 16th.

Q. Was that a Wednesday? A. Well, I could not tell you without looking.

The Court: May 23rd was a Wednesday; subtract seven from the date of Wednesday and you will have it.

Q. May 9 was a Wednesday, May 16 was a Wednesday, and May 23rd was a Wednesday; do you remember at this first meeting we called, that the No-Conscription League would have a meeting every Wednesday? A. I believe that was the thing.

Q. Those people I did not reach by 'phone, and those people who were not at the previous Wednesday meeting, and before the next meeting we would send them a postal card? A. Send them a postal card or a notice.

Q. When you received the letter from Miss Goldman from Springfield, did you read the letter and statement? A. I only read the statement, I did not have the letter.

Q. I mean the little note.

The Court: Are you asking what she did herself?

Mr. Content: Which was read at the meeting.

The Witness: You mean, when I received the original in the office?

Q. Received it in the mail. A. Certainly, I read it.

Q. You read the note, and you read the statement? A. Naturally, it was addressed to me.

Q. And then you typewrote the statement? A. I typewrote the statement; yes, sir.

Q. And then did you hear it read in the meeting? A. I read it myself.

Q. So that you read the statement repeatedly?

Mr. Content: She has not said that at all.

Q. I am asking, did you read the statement repeatedly? A. I read it when I received it, I typewrote it, and it was then read at the meeting.

Q. I would like to say to the jury—have you got a good memory? A. I think I have a pretty good memory.

Cross-examination by Mr. Content.

Q. Now, Miss Fitzgerald, this letter, the personal note, which you destroyed, you did not take that to the meeting of May 23rd? A. I did not, Mr. Content, I explained that.

Q. You did not make a copy of it? A. There was no necessity for that.

Q. You did not make a copy of it? A. I did not.

Q. Do you usually destroy Miss Goldman's letters to you? A. Some I destroy, some I do not destroy; I think I have destroyed all her letters.

Q. You think you have? A. I think I destroyed all the letters.

Q. You say her handwriting is hard to read? A. I destroyed all letters whenever it was necessary,

I destroyed them, because I did not want to be burdened with them.

Q. I see. You looked through the files with one of the officers, the other day, in order to find this letter? A. I did conscientiously; first I said I did casually. So—I spent half an hour down on them with this gentleman; there was another man who unlocked the door; I looked through all the papers.

Q. You did not find anything missing or destroyed by the District Attorney? A. I did not look for anything else; I was looking specifically for that.

Q. There were a great many papers there? A. Yes, there were a great many papers there.

Q. You say Miss Goldman has an illegible handwriting? A. Yes, sir; Miss Goldman has an illegible handwriting; it would be pretty difficult for anyone not used to her handwriting to read it.

Q. You think that you usually destroy her letters after they are received? A. I destroy all letters.

Q. I show you some of Miss Goldman's letters, and ask you whether the inscription reads, "Denver, July 3"? A. That is Miss Goldman's letter —handwriting.

Q. That is her handwriting, "Denver, July 3"; "Dearest Sash." Who is Sash?

Mr. Berkman: May I explain?

Mr. Content: I am asking who Sash is.

A. That is a personal matter. The one who wrote that——

Q. I am cross-examining; who is Sash, do you know?

Mr. Berkman: Please answer.

Q. Do you know who is Sash? A. Well, Sash is Russian for Alexander; Miss Goldman has addressed Mr. Berkman as Sash.

Q. That is a letter addressed to Mr. Berkman. Here is another letter from Chicago, July 16, quite a long letter; is that Miss Goldman's handwriting (handing paper)? A. Yes, sir; that is Miss Goldman's handwriting.

Q. "E" stands for Emma, I suppose; these are all legible, or am I reading them correctly? "Dearest Sash"——

Mr. Berkman: I object to reading personal letters; I think it is very indiscreet and immoral on the part of the District Attorney; he knows better. Now, this letter is not addressed to Miss Fitzgerald, but to Mr. Berkman. What business have you to read it here? I consider it is a damned outrage; I apologize to the Court.

The Court: There is no use getting excited; the District Attorney has a perfect right to call the attention of the witness to certain letters if he found them, and he has a perfect right to ascertain whether the handwriting is legible or not legible. You will let me see the letters (handed to the Court).

Mr. Berkman: It has been said by Miss Fitzgerald that she considers the handwriting of Miss Goldman as illegible. I think reading my personal letters very indiscreet; I do not know what is in the letter.

Mr. Content: I do not know either; I did not read the letter.

Mr. Berkman: You started to read it, and I stopped it.

Mr. Content: I have not read these letters; I have not the slightest idea what is in any of these letters. I simply used them for the purpose of showing her handwriting was not illegible; I merely wanted to show that a near-sighted gentleman like myself

could read them. I do not know what is in any of them; I do not care, what is more.

The Court: I think I have arrived at a solution. I will let the defendants go over these letters, this particular letter that the District Attorney started to ask the contents of; there is nothing at all of any character that is personal in the sense of disclosing private or personal affairs——

Mr. Content: Suppose you just take the first page.

The Court: Let the District Attorney show the defendants these letters, and in each letter you select a half or a quarter of a page, simply for the purpose of showing the character of the handwriting. You may select something that is quite innocuous; for instance, beginning in that letter——

Mr. Berkman: I will object to reading any of these letters, to use the letters as copies. I do not think it fair. Miss Goldman is known to travel around a great deal.

The Court: You are arriving at a conclusion, and bringing up a situation that does not exist. There is no purpose on the part of the Court, at least, to allow in evidence any letter that has to do with mere personal or private matter; I only desire to allow in evidence some few lines, containing no information of a personal character, entirely innocuous in itself, to show the character of the handwriting, that is all. Instead of doing as I have thought to do, to allow the whole letter to go to the jury for that purpose, I have allowed you to select some few lines of an innocuous character, solely for the purpose of the handwriting and nothing else. I haven't allowed all the items and statements that have nothing to do with the case; simply for the purpose of the hand-

writing. Now you may select any four or five lines, containing no intelligent reference to any private matters.

Miss Goldman: I have no objection whatever to anything which is not of a personal nature being read or shown to the jury; I wish to call your Honor's attention to the fact that a letter written in ink, sitting down at a table, would naturally be entirely different than a letter written on a fast running train with a pencil.

The Court: That, Miss Goldman, is a matter of argument; there is no testimony when the letter was written, and there can't be any until the person who wrote it herself testifies here, if she so concludes. In any litigation, whether civil or criminal, the Court would not allow to have introduced some purely personal matter which is utterly immaterial. Two persons may write to each other in regard to a great many things, formal affairs, personal affairs, what not, utterly immaterial.. And the sole purpose, I call your attention to, and I trust quite clearly, is simply to select something or other there which is entirely innocuous, and irrelevant, except on the point of disclosing the handwriting, which the District Attorney in view of the remark of Miss Fitzgerald, has as a matter of law a right to do. There is no occasion——

Mr. Berkman: I have no objection to it being read.

Mr. Content: This only goes to her credibility. I want to state I have not read the rest; I have only read the first page; I will confine my question to that.

Q. I ask you to look over my shoulder while I am reading the letter, to see if I am reading it correctly: 'Denver, July 3rd"——

The Court: Let it be marked in evidence.

Mr. Content: I offer it in evidence.

(Marked in evidence as Government's Exhibit No. 57.)

Mr. Content: I would like to have the rest of them marked for identification, merely to show that they are Miss Goldman's letters, for the purpose of comparison.

(Letters marked Government's Exhibits 58 and 59 for Identification.)

Q. These are letters it will take one-half of a storehouse to hold? A. I was not talking of anyone else's letters.

HELEN BOARDMAN resumed the stand.

Cross-examination by Mr. Content.

Q. Miss Boardman, I just want to ask you a few questions. You say you attended the meeting on the 18th of May; you attended the meeting? A. Yes, sir.

Q. At the Harlem River Casino? A. Yes, sir.

Q. Did you also attend the Hunt's Point meeting on June 4? A. Yes, sir.

Q. Well, now you stated—or what did Miss Goldman state in her speech of May 18th, according to your recollection? A. She said that she would not advise persons in regard to registration, because she did not believe in dictating another person's course of action.

Q. What else did she say during that speech? A. Well, her speech was on the subject of conscription, covered it generally.

Q. Do you remember any other phrase which she used outside of this one, to which you have already testified? A. I did not mean that as a quotation from her speech.

Q. I did not mean an exact quotation, I mean just the phrase on a particular phase of her speech; I quite understand you. I do not mean you could give it verbatim, you explained that on your direct examination. I mean, can you remember any other phrase that was made, not verbatim, but in substance? A. She said she was opposed to conscription, opposed to war.

Q. She said she was opposed to conscription and opposed to war? A. Yes, sir.

Q. Anything else? A. It is a little difficult to recall just now.

Q. Did she refer to Russia in any way? A. Yes, sir.

Q. What did she say about Russia? A. She was referring to Russia, the free Russia, and the revolution in Russia.

Q. What is your recollection of what she said about free Russia? A. I believe she said that Russia is in a freer position than America.

Q. Do you remember any of the remarks at the Hunt's Point Palace meeting on June 4th, in the Bronx? A. No; I did not hear the speeches.

Q. You did not hear any speeches? A. I was in the back of the hall; I was surrounded by soldiers; it was not very quiet.

Q. Miss Goldman spoke loudly and clearly that evening? A. Yes, but I was busy; I was taking up a collection.

The Court: Where were you, in the back of the hall?

The Witness: Yes, sir; but the most of the time I was in the box.

Q. Did you hear Mr. Berkman's speech on June 4? A. Well, no.

Q. Where were you during his speech? A. I was also at the back of the hall.

Q. Don't you know no collection was taken up during his speech? A. No collection was taken up during his speech, because I was simply standing at the back of the hall, moving about; there were a great many people standing all around about me; I heard fragments of it.

Q. Do you remember anything Alexander Berkman said on June 4th? A. No, sir.

Q. Do you remember anything Emma Goldman said on June 4? A. All I heard of her speech was at the time when the soldiers tried to create a disturbance in the hall, or quarreling with the crowd.

Q. Don't you confuse the May 18th speech and the June 4th speech with reference to the remarks and the matter of registration? A. No, not at all.

Q. Who spoke besides Miss Goldman on May 18th? A. May 18th.

Q. Yes, at the Harlem River Casino? A. Mr. Abbott, Mr. Weinberger, and Mr. Berkman.

Q. Is that all? A. That is all I remember.

Q. Did Mr. Carlo Tresca speak? A. I do not remember the name; somebody else spoke besides them; I do not remember who it was.

Q. Do you know Mr. Tresca, an Italian? A. No, sir; I do not. During part of that meeting I was standing in the lower part of the hall, I was not able to hear any speeches while I was there; I walked up afterwards into the box and I heard Miss Goldman's speech very distinctly.

Q. How far away were you from the stage while Miss Goldman was speaking? A. I can't tell. I think it was about the fourth box away from the stage.

Q. She could be heard distinctly there? A. I could hear quite distinctly by leaning forward, and concentrating entirely upon it.

Q. Miss Goldman is quite a speaker? A. Very good.

Q. She enunciates clearly and distinctly? A. Yes.

Q. As good as most women orators, or does it even better; would you consider her better than most female speakers? A. Better than most speakers.

By the Court.

Q. You stated that you belonged to some educational association? A. Yes, sir.

Q. Where is its office? A. 70 Fifth Avenue.

Q. Who are the directors of that organization, the managers or what? A. It is run by a committee.

Q. Who are on the committee? A. Mr. Webster Mitchell, Miss Hunt, Harriet Johnson, and Miss Dallas.

Q. Now, were you a member of this No-Conscription League? A. Yes, sir.

Q. Did you attend the meeting of May 16th? A. The meeting of May 16th? No.

Q. Did you attend the meeting of May 23rd? A. Yes, sir.

Q. At Miss Goldman's house? A. Yes, sir.

Q. Have you attended all other public meetings? A. No, not all of them.

Q. Well, in addition to the two meetings that you have referred to, have you attended any other public meetings? A. I went to the meeting at Forward Hall, we were unable to get in.

Q. Do you remember all of them? A. I could probably, the date.

By Mr. Berkman.

Q. Now, the private meeting, private, I mean the meeting other than when the general public were invited, how many of those have you attended? A. Only one.

Q. That is the one of May 23rd? A. Yes, sir.

Q. How long have you known Mr. Berkman? A. I only met Mr. Berkman once.

Q. How long have you known Miss Goldman? A. I have met Miss Goldman twice.

Q. Miss Boardman, do you remember the time when I spoke at the Hunt's Point Palace? A. Yes, sir.

Q. Do you remember whether there was any noise on the part of some persons there? A. Yes.

Q. Throwing things? A. Yes, sir.

Q. Shouting? A. Yes, sir.

Q. You were in the back, in the audience? A. Yes, sir.

Q. Would not be anything unusual if you did not hear us under those circumstances? A. No.

PIETRO ALLEGRA, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Miss Goldman.

Q. Where do you live? A. 65 Webster Avenue, Long Island City.

Q. Where are you working? A. At the Novelty Company, Long Island, at some factory in Long Island City.

Q. How long were you working at that place? A. Eleven years.

Q. Have you been at the Harlem River Casino? A. Yes, sir.

Q. The meeting on the 18th of May? A. Yes, sir.

Q. Where were you in the hall? A. On the platform.

Q. Did you see me on the platform before speaking? A. Absolutely no.

Q. You heard me speak? A. Yes, sir.

Q. Can you approximately remember the gist? A. The which?

Q. Can you remember the gist? Can you remember my saying I believed in violence, and we will use violence? A. Never you say this.

Q. Can you remember parts of the address, the speech made by me that evening? A. Yes. You talk against war, and about conscription, I was an anarchist and I would not tell what to do. It is unnatural, an anarchist would not tell people what to do.

Q. As an anarchist, I did not order people what to do? A. Sure.

Q. Excepting to ask them to assist. You say you were on the platform of the Harlem River Casino? A. Yes, sir.

Q. I mean, did you see a soldier walk up to Mr. Berkman? A. Never.

Q. Mr. Berkman then had this sore foot, did he not? A. Yes, sir.

Q. Were there friends near him? A. Yes, sir.

Q. So as to protect his foot? A. Sure.

Q. You have known me for awhile, have you? A. For a long time.

Q. Have you attended many of my lectures? A. Many meetings; before the war, too.

Q. Did you hear me at any time say we believe in violence and we will use violence? A. Never.

Q. Did you read some of the things—— A. I did.

Q. Some of my works, for instance? A. Yes.

Q. Did you hear me say at the meeting in the Harlem River Casino, anything in relation to conscription and registration? A. I heard before, you say, as an anarchist, you cannot tell what you got to do, do what you please.

The Court: What is that? As an anarchist, you heard her say, you cannot tell, you do what you please?

The Witness: Exactly.

The Court: Did you hear anything about conscription, that is what Miss Goldman asked you.

The Witness: About conscription? The conscription is against the law, against the Constitution of the United States.

The Court: You heard Miss Goldman say it is against the Constitution of the United States?

Miss Goldman: I think perhaps he did not understand.

Q. I did not mean to ask you what you thought about conscription or about registration; I asked you approximately what you heard me say at the meeting.

The Court: What did you hear Miss Goldman say?

The Witness: I do not remember; that is my idea——

The Court: You do not remember what you said?

The Witness: No, sir.

The Court: When you spoke about the Constitution of the United States, you were talking about your own view?

The Witness: Yes, sir.

By Mr. Berkman.

Q. Mr. Allegra, you stated you were on the platform at the mass meeting of May 18th? A. Yes, sir; May 18th I was—that is the first mass meeting.

The Court: At the Harlem River Casino.

Q. On the platform? A. Yes, sir.

Q. You had business there? A. I must speak at that time.

Q. You were to be one of the speakers? A. Yes, sir.

Q. Did you speak there? A. No, I did not speak, because the soldiers and the sailors started some disturbance to provoke the people.

Q. That meeting was one—do you remember all the speakers who spoke? A. Yes, sir.

Q. Mr. Tresca, who was mentioned here, was he a speaker? A. No, he is not a speaker.

Q. Did he speak at the meeting? A. Who, Tresca?

Q. Yes. A. No.

Q. Was he there? A. No, sir.

Q. At that meeting you were on the platform, do you remember where I was sitting on the platform, or standing, before I spoke? A. No, sir; you sat just the same position you sit now.

Q. Were there many people around me? A. Yes, sir.

Cross-examination by Mr. Content.

Q. Now, Mr. Allegra, how old are you? A. How old?

Q. Yes. A. I am ashamed to tell, forty-one.

Q. Where were you born? A. In Italy.

Q. When did you come to the United States? A. Why?

Q. When? A. About ten or eleven years ago.

Q. You are an American citizen? A. I have a paper, too.

Q. What is that? A. I have a paper.

Q. You completed your naturalization?

The Court: He wants to know whether you are an American citizen.

The Witness: Yes, sir.

Q. Were you admitted to citizenship? A. Yes, sir.

Q. And got your final papers? A. Yes, sir. The last papers.

Q. When? A. About four years ago, I guess

Q. Where? A. In Long Island.

Q. What court? A. Jamaica.

Q. Jamaica Supreme Court?

Mr. Berkman: I object to it; what has that got to do with the case?

The Court: Overruled.

Q. The Supreme Court? A. I do not remember.

Q. Do you remember the Judge's name? A. No, sir.

Q. Are you an anarchist? A. Well, if you answer, you tell something about it. Before, I was a Socialist; before this war; I am so disgusted about this war, it is enough to make a man an anarchist.

The Court: "I am so disgusted"—you mean you are an anarchist now? Are you now an anarchist?

The Witness: I say, I feel I am to be an anarchist; I am so disgusted with this war; I find out everybody is a liar; I find it is a terrible struggle against the working people, because they are being antagonized in business——

Q. You have even addressed meetings, street meetings and otherwise? A. All over, addressing meetings.

Q. You usually speak in Italian? A. Yes, sir, all over the United States.

HARRY M. KELLY, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Mr. Berkman.

Q. You write for mazagines and papers? A. Yes, sir.

Q. You have known me for a long time? A. A very long time.

Q. How many year, approximately, have you known me? A. Personally, over eleven years.

Q. Personally ten years? A. But through correspondence years before that.

Q. Are you a native? A. Yes, sir.

Q. Where were you born? A. In Missouri.

Q. We have been friends a great many years? A. Yes, sir.

Q. Do you know that my San Francisco office, in New York, was on the second floor of 20 East 125th Street? A. Yes, sir.

Q. Was it a front room or a back room? A. A back room.

Q. What is the front room? A. The front room is occupied by the man——

Q. I am speaking of the second floor— A. The second floor, the second floor is occupied by *Mother Earth.*

Q. While I was working in this City on the California matters, where was my office? A. Your office was on the second floor.

Q. Where on the second floor, back or front? A. Back.

Q. And *Mother Earth* was in the front at the same floor? A. Yes, sir.

Q. Do you know whether I published a paper in California? A. Yes, sir.

Q. What was the name of the paper? A. *The Blast.*

Q. Do you know whether editions of *The Blast* have appeared in New York? A. Yes, sir.

Q. Approximately how many? A. Two, I think; one I know.

Q. You are a writer for *The Blast?* A. I am a writer, and occasionally contribute.

Q. When I decided to bring *The Blast* to New York, do you know whether I was looking for an office for it? A. Yes, sir.

Q. Were you occupying any place at 20 East 125th Street? A. Yes, sir, the third floor back.

Q. You had the third floor back? A. Yes, sir.

Q. Do you remember a conversation in which I asked you whether you are going to use your room during the summer? A. Yes, sir.

Q. And what did you tell me? A. I told you no.

Q. You said you were not going to use the room. Did I say on that occasion I would like to use your room for *The Blast?* A. Yes, sir.

Q. What arrangements did we make about the room? A. Why, simply I was not there—I was not sure whether I would keep the room permanently. I thought I would, but I knew I would not occupy it for that summer, and I told you you could have it.

Q. So far as you know, I have been using that room? A. I have been up there since, and you have.

The Court: What magazines do you write for, Mr. Kelly?

The Witness: Why, I have contributed considerably to *Mother Earth, The Blast,* and a magazine I am interested myself in, *Modern Psychology.*

Mr. Content: No questions. That is all.

ANNA SLOAN, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Miss Goldman.

Q. What is your profession? A. Housekeeper.

Q. Have you any connection with art? A. I am married to an artist.

Q. The famous American painter, John Sloan? A. Thank you, Miss Goldman.

Q. Have you known me for some time, Mrs. Sloan? A. Ten years.

Q. In what way have you known me? A. I have known you intimately, both socially and in doing our work, birth control, strikes, taking care of strikers' children, what we think is wrong with the world, and what we have to do to correct the evil of the world.

Q. During your different associations with me in work and socially, have we occasionally discussed different theories? A. We have, Miss Goldman.

Q. Have we discussed anything pertaining to questions of violence? A. Yes, Miss Goldman.

Q. And can you approximately recollect in what connection? A. I remember one day that we talked, I distinctly asked you if you believed in violence, and you said "Ann, I do not believe in violence; I do not believe in anything that would not be explained."

Q. Were you at the Harlem River Casino meeting on May 18? A. I was.

Q. Could you hear the speeches? A. I could hear the speeches, yes, ma'am.

Q. You heard me speak? A. I did, Miss Goldman.

Q. Can you recollect whether at any time during that address that evening, I said we believed in violence and we will use violence? A. I did not hear you say anything of that kind, Miss Goldman.

Q. If you would have heard me, I mean, would it have been anything that you remembered? A. I would have remembered it, because I would have been shocked, after our conversation regarding that.

Q. Mrs. Sloan, you stated we were drawn together a great deal in work, birth control, and other matters; have you any recollection whether we were in the habit of exchanging lists of different people? A. We always exchanged lists.

Q. Liberal people interested in different ideas? A. Yes, ma'am.

Q. And in all the time you have known me, can you recollect any incident in the work in which we were drawn together, whether it was my habit to send out letters indiscriminately to people, regardless of whether they would be interested or not? A. I know you did nothing of that kind, Miss Goldman; I suggested names—we suggested names to each other, who would suggest other people who might be interested in our work. Then I gave you names for the Russian lecture course, whom I tried to reach for you.

Q. Do you remember the name of a lady and gentleman, Demorest? A. Mrs. Demorest is one of the names I suggested among the persons who would be interested in the Russian lecture course, in the so-called radical movement.

Q. And then you gave me the names? A. I gave you the names, suggesting those names be used.

Q. Mrs. Sloan, you have received letters from me occasionally, have you? A. I have, yes, Miss Goldman.

Q. In handwriting? A. I received handwritten letters from you, and I wrote you and asked you please not to write me handwritten letters, because I had to get Mr. Sloan to translate them, he did not like it any more.

Q. You found it difficult to decipher my writing? A. I did, Miss Goldman.

By Mr. Berkman.

Q. At the Harlem River Casino meeting, did you hear Miss Goldman or Mr. Berkman tell the people to register or not to register, advise or urge them not to register? A. No.

Q. Did you hear any other speakers advise people to register or not to register? A. No, sir.

Q. We had conversations on various matters connected with the movement we are interested in? A. Yes, sir.

Q. Did you hear me express any opinion with regard to advising people not to register? A. I asked you one day what you were going to do, and you said it was something that everybody in his own conscience should determine.

Q. Mrs. Sloan, when did you meet me personally? A. During the strike, I think it was 1911.

Q. The strike in 1911? A. Yes, sir.

Q. You met me again when I returned from the Coast? A. Last October.

Q. Do you know why I came then; for what purpose I came to New York? A. I knew after Miss Goldman told me you were here representing Thomas Mooney and his co-defendants, sent by organized labor in San Francisco, to help get publicity and money to save the lives of the men and women condemned to death out there.

Q. Did you see my credentials of my California unions? A. I did not.

Q. Did you hear me speak at the various labor unions in the City of New York? A. Yes, sir.

Q. On behalf of the California labor? A. I did.

Q. You heard me make my addresses? A. Yes, sir.

Q. Did you know I devoted all the time I was in New York to the California labor? A. I know you did.

Q. Do you recollect seeing my California office in this city? A. I know you had a temporary office in 20 East 125th Street.

Q. Was it front or back? A. In the back room

Q. Ever since *The Blast* was being published in New York, where did you know my office to be? A. At 20 East 125th Street.

Q. I mean, outside of the office in the back of the second floor? A. Upstairs, you got an office upstairs.

Q. On the third floor, is that? A. On the third floor.

Q. You know I used also an office on the third floor? A. Yes, sir.

Q. Mrs. Sloan, you heard me ask the labor organizations in this city for money for the California labor fund? A. I did, Mr. Berkman, yes, sir.

Q. You heard me say I am here in behalf of the innocent labor men on trial? A. Yes, sir.

By the Court.

Q. As I understand it, you are the secretary and treasurer of this Mooney defense trial? A. Here in New York.

Q. A considerable amount of money was collected? A. Quite a lot; Mr. Berkman representing the San Francisco labor fund, I turned it over to him, and he forwarded it to San Francisco; they knew him there, they did not know me.

Q. If there is a check for $1000, it is there? A. Yes, sir.

Mr. Content: It is May 9th, and it is not in evidence.

The Court: Very good.

Mr. Content: It was excluded on the defendants' objection.

The Court: I understand. The defendants called attention to it. He said she was the secretary and treasurer of this Mooney defense fund, or whatever the proper name of it is, and various sums of money were col-

lected, among them the thousand dollars which the defendant Berkman forwarded to California, for matters in connection with the fund.

Cross-examination by Mr. Content.

Q. I did not hear the name of the association of which you were treasurer; what is the name of it again? A. I was secretary and treasurer of the New York Publicity Committee for the San Francisco International Workers' Defense League.

Q. What was the purpose of collecting the funds? A. What was the purpose of collecting the funds? To pay lawyers with, Mr. Content.

Q. For what? A. To defend Thomas Mooney and his co-defendants, who we think are unjustly accused there of throwing a bomb in the Preparedness Parade in San Francisco.

Q. They are charged with murder in the first degree? A. Yes, sir, they are. And the District Attorney is charged with subornation of perjury.

By Mr. Berkman.

Q. As a matter of fact, you were instrumental in engaging Mr. Bourke Cockran of New York to go to San Francisco and defend the defendants? A. I was.

By the Court.

Q. Are you a member of this No-Conscription League? A. No, sir, I am not a member.

REBECCA SHELLEY, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Mr. Berkman.

Q. Miss Shelly, what is your occupation? A. I was a school teacher until 1914; since 1914 I have been working on peace propaganda.

Q. You belong to the Emergency Peace Federation? A. I am field secretary for the Emergency Peace Federation.

Q. Field secretary? A. Yes, sir.

Q. You are a graduate of some university? A. I am a graduate of the University of Michigan.

Q. You are a native? A. Yes, sir, very much a native.

Q. Your parents also? A. Yes, sir.

Q. You are interested in educational matters? A. Yes, very decidedly.

Q. You have been active in various movements that deal with general eduaction? A. Yes, sir, as a public school teacher I have been rather active.

Q. Do you remember a meeting on May 23rd? A. Yes, sir, I remember the meeting.

Q. A meeting that was had at Miss Goldman's apartment? A. Yes, sir.

Q. Were you there? A. I was.

Q. Was the Emergency Peace Federation invited to be present at the meeting? A. The Emergency Peace Federation received a letter from—in fact, I believe from Miss Fitzgerald, requesting the organization to send a delegate to a meeting of the No-Conscription League; I came unofficially representing the Emergency Peace Federation; we had no time to elect a delegate officially, and as there was no meeting of the executive committee I simply came in my own capacity.

Q. Do you know of your knowledge whether the Emergency Peace Federation received a letter from

the No-Conscription League, signed by Miss Fitzgerald, inviting you to that meeting on May 23rd? A. Well, I am not absolutely sure that Miss Fitzgerald signed the letter; I think, however, she did. I remember Miss Fitzgerald was one of the names on the letterhead of which I have any recollection.

Q. Was the letter on the official letterhead of the No-Conscription League? A. It was.

Q. Will you state the character of the meeting? A. I do not remember the exact wording of the letter, but as I recall it, the meeting was called for the purpose of discussing the attitude of the No-Conscription League on registration, and the organization of a mass meeting.

Q. Was Miss Goldman present at the meeting? A. She was not.

Q. Was Mr. Berkman present? A. Yes, Mr. Berkman was present.

Q. At that meeting on May 23rd, you say, Miss Goldman was not present? A. No, sir, she was not.

Q. Was anything said or mentioned why Miss Goldman was not present at that meeting? A. Yes, Miss Goldman was not present because of a previous engagement to speak elsewhere.

Q. Was any word received from Miss Goldman? A. Yes, a letter was, as I have since heard, designated a statement, read from Miss Goldman.

Q. A statement was read from Miss Goldman? A. Yes, sir.

Q. Tell us as near as you can remember the contents of that statement? A. The statement expressed Miss Goldman's regret that she was unable to be present at this meeting; she said a speaking engagement of previous standing compelled her to be absent. In this letter she expressed her desire that the members of the No-Conscription League and others who had looked to her for leadership and advice, stand true to the conviction, to their convictions, and be loyal to their consciences, be loyal

to right as they understood it, with regard to the immediate pressing questions, that of registration. Miss Goldman stated in this letter that she, as an anarchist, did not propose to advise or urge anyone, either to register or not to register. I am not familiar with the science of anarchism, but I understood——

Mr. Content: I object, we do not want what the witness understood.

The Court: You are confined to giving your recollection of what was in the letter.

A. I surmised—the letter then apparently was in accordance with certain principles of the writer, she stated that she could not advise either to register or not to register, that would be taking the same sort of attitude that the writer objected to in the Government, when the Government attempted to use compulsion where matters of conscience are concerned. That embraces my recollection. I am not giving the exact wording.

Q. You are absolutely certain such a letter or such a statement from Miss Goldman was read? A. Yes, I am certain.

Q. What did the meeting do after the statement was read? A. The meeting then entered into a discussion of the questions of registration; I was unable to stay to the end of the meeting; I left between half past ten and eleven o'clock.

The Court: Who read the statement, do you remember?

The Witness: I do not recollect exactly who read the statement.

Q. Are you an anarchist? A. No, sir.

Cross-examination by Mr. Content.

Q. How do you know the statement was from Miss Goldman; that the statement was from Miss

Goldman? A. I do not know the statement was from Miss Goldman, except I took the word of those who presented the statement and read the statement.

Q. You do not know whence it originated, yourself? A. Of course not; I only took the word of those who read the statement.

Q. What kind of a statement was it, I mean typewritten or written? A. I do not know; I saw only the back of the pages or page, but I could not at that time have told whether typewritten or written.

Q. You do not remember who read it? A. I can recollect Miss Fitzgerald began to read it and somebody else finished, although I am not positive of it.

Q. Do you know who else was at the meeting, anyone else? A. Miss Boardman.

Q. Did you know her before, before the date of that meeting? A. I had seen her, I did not know her personally; I have since become personally acquainted with her.

Q. Up to that time you were not personally acquainted with her? A. No, sir.

Q. Who else was there beside Miss Boardman, Miss Fitzgerald and Mr. Berkman? A. Mr. Weinberger arrived there.

Q. You mean Mr. Harry Weinberger? A. Yes, sir.

Q. A lawyer? A. Yes, sir. Professor Dana was also there.

Q. Of Columbia, you mean? A. Yes, sir.

Q. Anybody else that you recall? A. No. I did not know many people in the crowd.

By Mr. Berkman.

Q. You saw Mr. Harry Weinberger at that meeting of May 23? A. Yes, sir.

Q. Do you remember members present asking Mr. Weinberger for his legal advice? A. Yes, sir.

Q. And you heard Mr. Weinberger speak there and give legal advice? A. Mr. Weinberger gave

various legal aspects on the question of registration; I do not think Mr. Weinberger would call it advice, he was giving a legal opinion on the various aspects.

Q. He gave a legal opinion on the various aspects, you say, on this question of militarism and war and everything?

Mr. Content: She said registration.

The Court: What subject did he talk about, did he refer to, Mr. Weinberger?

The Witness: He referred particularly to the question of registration and its relation to conscription, its relation—its possible relation to enforced industrial service; its possible relation to enforced industrial service.

By Mr. Content.

Q. Tell us all what he said, tell all you remember Weinberger said? A. I believe I have told everything I remember about what Mr. Weinberger said.

The Court: You haven't told us anything; you think you have; you said—you simply characterized what he did; what did he say about the legal aspects?

The Witness: The question—the particular question that seemed to be agitating the young men present at the meeting was this, if we register, do we through registration come under military law. Mr. Weinberger expressed both sides of that. And then explained the possible results of registration as far as coming under military law was concerned. He said, according to one opinion, one may come under military law, and according to other opinions one would not come under military law. The conscientious objector to war might be tried under military law, but that, I believe—as far as the law, that was problematical, not certain.

By Mr. Content.

Q. Did he state the legal effect of not registering? A. Yes, sir.

Q. What did he say about that? A. As near as I can recollect, Mr. Weinberger said that if one refused to register, he was imprisoned—he would be imprisoned from one day to one year, if he refused to register.

The Court: You say there was some young men present?

The Witness: Yes, sir.

The Court: What do you mean by young men; you mean young men in the twenties?

The Witness: Young men in the twenties?

The Court: How many of them?

The Witness: I should say there were from twenty to twenty-five, men between twenty-one and thirty-one present.

The Court: In the so-called draft age?

The Witness: Yes, sir.

The Court: Some of them asked for advice, did they?

The Witness: Yes, sir.

The Court: Weinberger gave this yes or no opinion, did he?

The Witness: Yes, sir. He gave the legal aspect of that, which was in the nature of a legal opinion; the legal opinion not being clear in the sense it had not been determined whether or not young men would come under military law if they registered.

The Court: Let us get that clear; you may not be familiar with the exact technicality. You say military law, were you referring to law—was he referring to law administered by the military authorities, or the law relating to the so-called draft act as administered by the civil authorities? I mean, what do you mean by military law—I don't mean

what you mean, what did he say about that; did he point out any distinction between military and civil law?

The Witness: Yes. As near as I understood—I understood Mr. Weinberger, one of the questions at issue upon which he spoke was this: if a young man—if a man registered, then there was the possibility of calling upon the others who were not taken for military service or industrial service; and the question which a number of men asked was this question, can we then, subject to military law, be drafted for industrial service, whether or not we are not taken for military service, could they be drafted for industrial service, must we go under the military law, or do we retain our civil right, the right to refuse to work where we do not want to work.

The Court: That was what you understood him to say as I understand it; you just stated what you understood him to say?

The Witness: Yes, sir.

The Court: Was there any question asked by anybody at that meeting as to the legal effect of advising persons not to register?

The Witness: I have no distinct recollection of anything being said at that meeting.

The Court: Well, is it correct to say there was no discussion upon that subject at all?

The Witness: No, I think that would not be correct.

The Court: What discussion was there at this meeting so far as your memory serves you?

The Witness: As far as my memory serves me there was an appreciation of the fact that advice——

The Court: No appreciation?

The Witness: Appreciation expressed that advice not to register would land the person so advising in jail.

The Court: Who said that?

The Witness: I do not remember who said it. I carefully said, there seemed to be an appreciation expressed of that fact.

The Court: Who said that?

The Witness: I do not remember.

The Court: Was there any discussion in addition to what you have told us about actual service under the draft act; was there anything more on that subject?

The Witness: Well, actual service under the draft act would mean conscription; there was discussion—some discussion on conscription.

The Court: What happened about that?

The Witness: Well, of course——

The Court: Let me correct that. No one can expect you to remember every word said about that; you are only asked for your best recollection.

The Witness: A number of men there expressed their opinion that conscription was contrary to their convictions.

The Court: Was there anything said then by anybody after such an expression of opinion?

The Witness: A number of men said they were going to stand by their conviction.

The Court: That is to say they were going to refuse to do what?

The Witness: Well, I suppose it might be interpreted they would refuse to be conscripted; the chief import of the entire meeting was the discussion of registration, and that was my chief impression, the chief impression carried away from the meeting; I scarcely think it is fair to expect me to remember what was said about conscription.

The Court: I have already indicated you can only be expected to give your best recollection. Now, do you remember whether anyone there said, whether it was Mr. Weinberger or anyone else, in substance or in effect, that registrations under this act were a necessary proceeding or step toward what you call conscription; whether that was pointed out by anybody?

The Witness: I do not quite understand just what you mean by "necessary proceeding."

The Court: Whether anybody pointed out, before, under the act, the Government would call upon those of the age in question to serve in some capacity, that the act required that the person should be registered so that the Government could have the list of those persons within the so-called draft age?

The Witness: I think—yes, I believe they recognized the fact the Government would want their names, a list of the names of the young men.

The Court: You think it was clearly stated at the meeting?

The Witness: I would not say it was clearly stated; I think they understood, simply understood, and that was the understanding though it was not necessarily clearly stated.

The Court: You think it was clear to each of them at that meeting?

The Witness: I think it was clear that the Government felt it necessary to first obtain these names and addresses of men of military age before proceeding to enforce the draft act.

By Mr. Content.

Q. Did any one young man present say he would not register himself? A. There were various views expressed; I certainly do not remember any one young man who so stated.

Q. I do not mean the name; did any one state he would not register? A. Yes, I believe there may have been a number of people there.

Q. I am not asking you his name or to incriminate anyone; I want to know whether that view was expressed? A. I think that view was expressed.

Redirect examination by Miss Goldman.

Q. May I ask whether you have any knowledge of Mr. Weinberger being the counsel-in-chief of the American Legal Defense Society? A. Yes, Mr. Weinberger is counsel for the American Legal Defense Society.

Q. Having been connected with the Emergency Peace Society, do you know, or do you not, that Mr. Harry Weinberger acted merely in his legal capacity when he was called upon? A. Yes. I should say that he acted in a legal capacity in the sense of expressing a legal opinion when called upon.

Q. Then, as I was not at the meeting on the 23rd, I could not ask you as to his interpretation, but so far as you know in connection with the Peace Society, is it or is it not true, that Mr. Harry Weinberger acted as the lawyer for the American Legal Defense Society? A. Yes, that is true.

Q. Then may I ask whether Mr. Harry Weinberger gave legal aspects of the draft and conscription on the night you were there? A. He did.

By Mr. Berkman.

Q. Do you remember Mr. Harry Weinberger stating that refusal to register is punishable by one year and fine, I believe?

Mr. Content: By not more than one year nor less than one day. One day to one year.

The Witness: One day to one year.

Q. Do you remember that somebody expressed the opinion that they would not register, and do you remember whether any reason was expressed by the young men that they would register? A. Yes, there were a number of young men there who repeatedly said they expected to register, and to register as conscientious objectors to the war.

Q. And didn't we discuss at that meeting the question of conscientious objection in connection with the Draft Law? A. Yes, I believe there was such discussion of that.

Q. And do you remember it being mentioned that the term is new in this country, and that we want to present it to the people, "Conscientious Objector"? A. Yes.

By Mr. Content.

Q. In other words, some said they would register, and some said they would not; there was a divergence of opinion, is that correct? A. Yes.

(Recess until 2.05 P. M.)

AFTERNOON SESSION.

(2.05 o'clock P. M.)

MINNA LEDERMAN, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Mr. Berkman.

Q. Miss Lederman, what is your occupation? A. I have none now. I have just graduated from college.

Q. What college? A. Barnard.

Q. Are you a native of this country? A. Yes.

Q. Did you attend a meeting in the Harlem River Casino on May 18? A. Yes.

Q. Were you near enough to the platform to hear Miss Goldman's speech? A. I was about the eighth or tenth box from the platform, during Miss Goldman's speech.

Q. Did you ever hear Miss Goldman speak before? A. No, I had never seen Miss Goldman before.

Q. You had never seen Miss Goldman before? A. No.

Q. You heard Miss Goldman speak at that meeting? A. Yes.

Q. Did you see her on the platform before she spoke? A. No, I did not. I was watching for Miss Goldman to come, because I had never seen her; and I kept asking people if that and this person were she, and they said, no, and just as she came forward to speak, someone identified her for me.

Q. You heard the whole speech of Miss Goldman? A. Yes.

Q. Very clearly? A. Yes.

Q. Did Miss Goldman during her speech say or read a sentence like this: "We believe in violence and we will use violence"? A. No, sir.

Q. You are positive? A. Positive.

Q. Did she say, or did you hear her say anything which might be construed in that sense? A. No.

Q. Did you hear Miss Goldman at that meeting advise or urge people not to register? A. No, I did not.

Q. Did you hear Mr. Berkman's speech? A. I could not hear his speech at all, because of the noise behind my box becoming louder during Mr. Berkman's speech than during Miss Goldman's.

Q. There was a noise behind the box? A. Yes.

Q. During my speech? A. Yes.

Cross-examination by Mr. Content.

Q. You are a member of the Collegiate Anti-Militaristic League? A. I am.

Q. Is that the same league to which Mr. Phillips and Mr. Cattell belong? A. No, but I was a member of that league. Mr. Cattell was not a member, and I don't know whether Mr. Phillips was.

Q. You are a graduate of Barnard College? A. Yes.

Q. You heard Miss Goldman's speech rather distinctly that evening? A. Yes.

Q. She is a good speaker, is she, in your opinion? A. Very, very.

Q. A very clear speaker? A. Yes.

Q. Where was your box situated with reference to the point where Miss Goldman was standing during her address? A. Well, my box was either the eighth or the tenth on the left-hand side of Miss Goldman.

Q. And you could hear her pretty well from there? A. Yes.

Q. And at the time Mr. Berkman spoke the noise was such that you could not hear, is that correct? A. I could hear him, part of his speech, but not very well.

Q. Who spoke first? A. Miss Goldman spoke first. The noise became increasingly louder as the meeting progressed.

Q. And you are quite positive Miss Goldman said, "We believe in violence and we will use violence"?

The Court: That she did not.

Mr. Berkman: That she did not.

A. Quite positive that she did not say so.

Q. Now, do you remember anything you did hear? A. I remember particularly she approached the audience not to let itself become disturbed by the soldiers who were trying to create a racket.

Q. In what part of her speech did she make that remark? A. Several times.

Q. Do you remember anything else she said during this speech? A. I remember she discussed this conscription, said that the matter of conscription had come so easily in this country and taken a long time to come in England, and not at all in Canada.

Q. Anything else? A. I don't remember anything else.

Q. Did you hear her mention the word registration? A. I don't remember anything about registration.

Q. You didn't—you don't remember that at all? A. No.

The Court: Or the word "register."

Q. Or "register"? A. No.

The Court: Do you say you don't, or that you don't remember.

The Witness: I don't remember that.

The Court: You don't remember one way or the other, is that it?

The Witness: That is it.

Q. Wouldn't you be apt to remember if she made some remarks about registration? A. I was not so much interested in her remarks on registration. I was much more interested in her remarks on conscription.

Q. You don't remember that she mentioned the word "register" or "registration," in any part of her speech? A. I do not say she did not, but I don't remember.

Q. You don't remember her using the word "violence" at any time? A. No, sir. I am sure she did not use the word "violence."

Q. Did she say anything about the Russian revolution? A. She spoke about Russia.

Q. What did she say about Russia? A. She said that Russia had gained a freedom that might prove greater than any freedom that we have in this country.

Q. Is that all she said? A. Well, that is the gist of her remarks on the subject.

Q. Did she mention any celebrated Russian? A. What is the question?

Q. Did she mention any celebrated Russian, that you remember? A. She mentioned Breshkowzka.

Q. Did she mention any American statesmen in her speech? A. I don't remember. It don't seem to me that she did.

Q. It don't seem to you that she did? A. No.

Q. Do you remember whether she mentioned Senator La Follette in her speech? A. I don't remember any mention of Senator La Follette.

Q. Do you know whether she mentioned Senator Stone in her speech? A. No, sir, I do not.

Q. Do you know whether she made any references to Germany in her speech? A. I don't remember any.

Q. Do you recollect? A. No.

Q. Do you remember whether she said this, "They have a Kaiser, the kind of a Kaiser they want and are going to stand for"? A. I don't remember any such statement. I mean if there had been such a statement it would have made an impression on me.

Q. Did you hear her mention the name of Wendell Phillips, in her speech? A. She did mention Phillips, I think.

Q. Did she mention any other writers? A. I am not sure, but I think she mentioned Emerson.

Q. Did she say or do you recall whether she said this: "How many people are going to refuse to conscript, and I say there are enough"? Was anything like that said to your recollection? A. No.

Q. Did she say anything about a subsequent demonstration that was being planned? A. She spoke of other mass meetings she hoped to have held throughout the city.

Q. Have you been at any other meeting that she spoke at? A. No, that was the only time I ever saw or heard Miss Goldman.

Q. You heard her distinctly, as you said before? A. Yes.

By the Court.

Q. Is this the first day you have been in court during this trial? A. Yes.

Q. You say you heard Miss Goldman talk distinctly? A. Yes.

Q. And her enunciation was clear? A. Yes.

Q. Did you have any difficulty at the time in telling what she said? A. No, she kept the audience very quiet.

Q. And during her speech the audience was quiet? A. Well, whenever the noises—there were quite a few noises around the boxes—appeared to get louder, Miss Goldman would silence it; and she refused to have the crowd applaud, several parts in her speech, because it made so much interruption, and so much noise, that she could not get through her speech in time.

Q. Did she speak slowly, or quickly, or partly sometimes slow and sometimes quick, or how? A. I think she spoke rather rapidly.

Q. Did she speak slowly at times? A. I don't remember. I remember only the intentions I came with to the place.

Q. You don't remember how she spoke? A. Well, I don't remember if she spoke slowly at times. I was under the general impression that she spoke rapidly.

Q. And throughout, you had no difficulty in understanding her? A. Not at all.

Q. In the main, were her words simple words? A. Yes, very simple.

By Mr. Content.

Q. It was a mass meeting, and people of all kinds were there? A. Yes.

By Mr. Berkman.

Q. Miss Lederman, if this woman had used the expression, "We believe in violence and will use it," would that have attracted your attention? A. Yes.

Q. And you don't remember having heard such an expression? A. I do not.

Q. Or anything similar? A. Or anything similar.

Q. When the word, Breshkowzka was mentioned by Miss Goldman, she also mentioned another name with it, a Russian name? A. Yes, she mentioned another name there, a Russian name, which I can't remember.

ALFRED SEELENFREUND, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Mr. Berkman.

Q. What is your business or profession? A. Attorney at law.

Q. And are you a native of this country? A. I am.

Q. Were you on May 18th at the Harlem River Casino? A. I was.

Q. Where were you sitting? A. I was sitting in one of the boxes on the left side right above the platform.

Q. And were you on the right or the left side of the platform? A. I was on the left side, that is, with the speaker facing me I was on the left side.

Q. Do you remember Miss Goldman's speaking at that meeting? A. I do.

Q. Did you ever hear her speak before? A. I never did.

Q. Had you ever been to a similar meeting before? A. No.

Q. You were interested to hear Miss Goldman speak, is that it? A. No, no, I had an appointment

with Mr. Weinberger, who is a personal friend of mine, and he told me that he would speak there that night, and I went up there to meet him.

Q. You came to hear Mr. Weinberger? A. Yes.

Q. And did you hear Mr. Weinberger? A. Yes, I heard all of the speakers.

Q. Was there any other purpose in your coming there? A. Why, I told Mr. Weinberger I was going up there to see how violent his anarchists could be.

Q. To see how violent his anarchists could be? A. Yes.

Q. Did you hear Miss Goldman's speech? A. I did.

Q. Did she, during her speech say, "We believe in violence and we will use it"? A. No.

Q. If she had made a statement like that, it would have attracted your attention? A. It would, yes.

Q. Did she say anything that might be interpreted as meaning that? A. No.

Q. You were not in sympathy with the speaker? A. No, I am not an anarchist.

Q. You are not in sympathy with anarchists? A. No.

Q. Did you hear Miss Goldman advise or urge her audience not to register? A. No.

Q. Did you hear Mr. Berkman there? A. I did.

Q. First, to finish with Miss Goldman's speech —is Miss Goldman a rapid speaker? A. Well, she was rapid that night. That is the first time I ever heard her.

Q. That is the first time you heard her and she was rapid that night? A. Yes, rather rapid.

Q. She was clear at the same time? A. Very clear.

Q. She was both rapid and clear? A. Rapid and clear.

Q. Did you hear Mr. Berkman speak? A. I did.

Q. Did you hear everything Mr. Berkman said? A. I did.

Q. Did you hear Mr. Berkman advise or urge people not to register? A. No.

Q. Did you hear anyone at that meeting on the platform advise or urge people not to register? A. No.

Cross-examination by Mr. Content.

Q. Was anything said about registration? A. Why, I don't think there was, Mr. Content.

Q. Now, Mr. Seelenfreund, you are a member of the bar, you know whether that is of importance? A. Well, I paid particular attention to see how far she would go in abusing the law, and I can say I am quite sure nothing regarding registration was said there.

Q. You don't recollect the use of the word "register" or "registration"? A. No, I do not.

Q. And you were there during the entire meeting? A. Yes.

Q. Well, did the people at that meeting take any vote on registration? A. No.

Q. Or did they make any pledges or anything of that sort? A. No.

Q. There was no *viva voce* vote, or anything like that? A. No.

Q. And your best recollection is that words "registration" or "register" were not mentioned at all? A. That is my best recollection.

Q. Do you remember anything else that was said during Miss Goldman's speech? A. Yes, I heard her say, I believe, that there was more democracy in Russia to-day than there was in this country.

Q. Did she say anything about the Kaiser, during her speech—that is, the German Kaiser? A. She mentioned the name "Kaiser," except I don't exactly recall in what connection she used it. I think she said the Kaiser was not paying for that meeting, and that they would be accused of it.

Q. Did you hear the defendant Goldman state that the Germans were not disappointed in the

Kaiser, they have a Kaiser, the kind of a Kaiser they want, and are going to stand for? Did you hear her—do you know whether she said that? A. I recall something said in regard to the Kaiser.

Q. Do you remember whether she said, "Democracy is the laughing stock before all Europe." A. No, she did not say it in that way.

Q. Do you remember whether she said, "Congress is in the hands of those who pull the strings, it is a jumping jack"? A. She may have said words to that effect. I believe she——

Q. (Interposing) Do you recall whether she mentioned the names of any Congressmen or Senators during that speech? A. No, I do not.

Q. Would you recollect it, if she mentioned the name of Senator La Follette during her speech? A. The name La Follette was mentioned. I think Mr. Weinberger mentioned that in talking.

Q. No, I am talking about Miss Goldman's speech. Unfortunately I did not get a copy of Mr. Weinberger's? A. I do not think Miss Goldman mentioned that name.

By the Court.

Q. Did Miss Goldman mention the name of any of the members of Congress—of the House of Representatives or the Senate? A. Well, I would not say she mentioned them. I don't recall that she did. I know she mentioned some Russian names.

By Mr. Content.

Q. Did she say this: "I am not afraid of prison. I have been there before"? A. I think she said something to that effect.

Q. Did she say: "You cannot stop the revolutionary spirit"? A. I think so, yes.

Q. Are you associated with Mr. Weinberger? A. No.

Redirect examination by Mr. Berkman.

Q. Do you remember the connection in which Miss Goldman said that, "I am not afraid of prison and I will say what I think"? Do you know in what connection she said that? A. I only recall it was part of her speech. I paid more particular attention to find out whether she was going to say anything in violation of the law, or not. I went up to see how far she would go.

Q. And do you remember her saying that she refused to advise people not to register, not because she is afraid of jail, but because she did not believe in advising people that way? A. I remember she did say that, yes.

By Mr. Content.

Q. Do you recall that distinctly? A. Well, not in those words, but to that effect, that she would not advise people not to register.

Q. Well, I thought you told us on direct examination very clearly, in response to several questions, put by myself and the Court, that she never mentioned the word "register" A. Well, I told you that. Now that Mr. Berkman recalls it to my mind——

Mr. Berkman: Does it refresh your memory?

By the Court.

Q. Is it your testimony that she positively stated— A. (Interposing) No.

Q. How do you know what I am going to ask you? Is it your testimony that she positively stated she would not advise people not to register? A. No, she stated in effect——

The Court: Don't give it in effect.

The Witness: That is all I can give you.

Q. You can give it either in her language or in substance. A. She stated then she was not there to give advise or to tell people what to do; that it was up to them to decide for themselves; and I believe that is what I meant when I said she did not advise them to register or not to register.

Q. Was the word "register" or "registration" used throughout the speech, that word—that is to say, either of those words "register" or "registration," in any connection? A. To my best recollection—my best recollection is now it was not used.

By Mr. Content.

Q. Then you answered Mr. Berkman improperly, didn't you? A. Well, I answered to the best of my ability. Mr. Berkman did not ask me whether the word "registration" was used.

By the Court.

Q. Well, do you say it was not used, or that that is simply your recollection? A. It is my recollection the word was not used, but I will not say it was not used.

Q. Is it your clear recollection, or— A. (Interposing) It is—to my best recollection it was not used, the word "registration," itself.

Q. Am I right in understanding that you went there to keep an appointment with Mr. Weinberger? A. I did.

Q. On some personal matter? A. Yes, on some personal matter.

Q. And I imagine you remained out of curiosity? A. Well, I went there out of curiosity, yes.

Q. Well, did you go for the purpose of seeing Mr. Weinberger, or for the purpose of attending the meeting? A. Why, I had an appointment with Mr. Weinberger, and he told me he would be there, and then I went as a matter of curiosity to see—I told him before I went, I said to him, "I am going to see how violent your anarchists can be," because

I knew he represented Miss Goldman and Mr. Berkman and some others.

By Mr. Content.

Q. You were with him during the trial of Kramer and Becker? A. I was.

By the Court.

Q. How do you know you knew he represented them? A. I know him for fifteen years. We belong to the same clubs, and we were brought up in the same neighborhood, and I take a personal interest in Mr. Weinberger. He belongs in my section.

Q. You did not understand my question. You say he represented them—how do you know that? A. Why, he told me, and I read it in the newspapers.

Q. You mean represented them professionally? A. No, as an attorney.

Q. Well, I say, didn't you know—you are an attorney, when I say professionally, that means as an attorney? A. Yes, professionally.

Q. You mean he represented them professionally? A Yes.

Q. Well, in what way? A. Well, I knew that he was the attorney for the American Legal Defense League. I knew when it was organized, and I spoke to him about some things he did and was going to do. I looked over some articles he wrote before he signed them; and we have been working together for a good many years, and we have never been on the same side of the fence; Mr. Weinberger has always been a Republican while I have been a Democrat.

Q. Well, in this matter, what did you mean? You mean he was the lawyer for the defendants? A. He was the lawyer representing them in any proceedings that came on before the courts.

Q. I see. Had he represented them professionally, to your knowledge—don't answer anything you

don't know? A. Represented Miss Goldman, you mean?

Q. Yes. A. Yes.

Q. As a lawyer? A. Yes.

Q. In a proceeding in some court? A. Yes, Special Sessions.

Q. At that time he represented her as her attorney, is that right? A. Yes.

Q. Do you know whether he, Weinberger, passed on any of the literature? A. Any of their literature?

Q. Yes. A. I don't think he ever did it.

Q. I asked you, did you know? A. I don't know, no.

Q. Were you present at any time—I do not ask the subject of the conference—were you present at any time when he had any talk with either of the defendants? A. No, the first time——

Q. You can say yes or no. A. No.

Q. You were never present? A. Never present.

Q. Are you associated with him professionally? A. I am not.

Q. In any matter? A. No matter at all.

Q. When were you first asked as to your recollection of what took place at the Harlem River Casino? A. Why, I was never asked. I never spoke to Miss Goldman. I was subpoenaed the day before yesterday for this trial.

Q. Did you talk about that meeting to anyone? A. To anyone?

Q. Yes. A. Why, no.

Q. Did you recall speaking of it to Mr. Weinberger? A. I did, right after the meeting, as we went home.

Q. Did you speak of it since? A. I don't think so. I haven't had a chance to speak to him since.

Q. No, just say yes or no. A. No.

Q. So, since the night of the meeting, you never spoke to Mr. Weinberger about it? A. No.

Q. How often have you seen him since then? A. Oh, very often.

Q. When did you see him last? A. Saw him this morning.

Q. Where? A. At his office.

Q. Did he send for you or did you go there? A. Why, I got a subpoena, and I came down to his office, and I showed it—and he was very busy with some people and I ran over to the court. It was about ten thirty at that time.

Q. You got a subpoena? A. Yes.

Q. Who gave you the subpoena? A. It was mailed to me.

Q. Was there any mark on the envelope indicating from whence it was mailed? A. Why, it was a special delivery, reached the house, I believe, at about eleven or twelve o'clock that night, the day before yesterday.

Q. You don't understand my question. Was there any subscription on the envelope to show from where it was mailed? A. I couldn't say positively——

Mr. Content: Who the sender was?

The Witness: Yes.

Q. Yes, who the sender was? A. Who the sender was? Mr. Weinberger.

Q. You mean to say the envelope had his name and law office on it? A. Yes.

Q. Have you got that with you? A. No, I have not.

Q. See if I understand you correctly? You received a subpoena last night— A. (Interposing) No, the night before last. I did not receive——

Q. (Interposing) Well, a subpoena came by special delivery to you in an envelope with Mr. Weinberger's name and address on it? A. Yes.

Q. And after that, and until this morning, did you see him? A. I saw him this morning for a fraction of a second.

Q. Excepting this morning? A. No, sir.

By Mr. Content.

Q. Let me summarize this one thing: You stated on your cross-examination in response to questions both by his Honor and myself that the words "register" or "registration" were not used; then, Mr. Berkman asked you some question on redirect examination in which the word "registration" was used; and upon a recross I asked you about that, and you said Mr. Berkman refreshed your recollection; then upon further cross-examination you said it was still your best recollection that the word had not been used. Is that correct? A. That is correct.

BOLTON HALL, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Miss Goldman.

Q. What is your occupation, please? A. I am a land owner.

Q. No, your profession? A. I am a lawyer, but not in active practice.

Q. Mr. Hall, are you a native of the United States? A. No, I was born in Ireland.

Q. How long have you been in America? A. About forty-seven years, forty-nine years, something like that.

Q. Mr. Hall, have you known me for any length of time at all? A. Yes, perhaps for twenty or twenty-five years.

Q. During this time did you have occasion to receive letters from me? A. Yes, a number of times.

Q. In what form were the letters, were they in my handwriting or— A. Most of the letters as far as I remember, always were in handwriting.

Q. Mr. Hall, in receiving your letters, did you have any difficulty at all in reading them? A. Some letters, short ones, were quite legible. The long ones I always turned over to my stenographer to make a copy of because I found it was hard to make them out.

Q. You have just said you have known me for a number of years? A. Yes.

Q. We had many discussions during that time? A. Very many.

Q. On different subjects? A. Very great variety of topics.

Q. We did not always agree? A. I think we did not generally agree.

Q. Have you, in all the different discussions that you had with me, on different topics—did you ever hear me say, "We believe in violence and we will use violence"? A. No, I never did. I never heard anything to that effect.

Q. Did you ever see anything in my writing to that effect? A. No, I never did. I always gathered that you believed in education, and were trying to educate the people, and that only by the education of the people could we attain any real liberty. In that we agreed.

Q. Do you know whether during the time of our acquaintance I ever refused to openly stand for what I believed? A. No, I think you never did so refuse.

Q. Did you ever find me denying anything I stood for? A. No, I never have heard you denying anything you had previously avowed.

Cross-examination by Mr. Content.

Q. Did you know Miss Goldman in 1893? A. I think so, yes.

Q. Do you know that in 1893, in a public speech, Miss Goldman urged people——

Miss Goldman: I object.

Mr. Content: I have not finished my question.

Miss Goldman: I object. Any public speeches in 1893 have no connection with the charge in this case.

Mr. Content: He has been testifying that she never attempted violence.

By the Court.

Q. Did you ever hear a speech of Miss Goldman in 1893? A. I can't remember. I am not very apt at dates. I can't remember whether I heard such a speech at that time or not.

By Mr. Content.

Q. Did you ever hear a speech in which Miss Goldman urged the people to take what they wanted by force?

Miss Goldman: Objection.

A. No, I did not.

Miss Goldman: Objection withdrawn.

Redirect examination by Miss Goldman.

Q. I have not expected you, Mr. Hall, to remember all the speeches I made in twenty-four years, so I did not ask you about the speeches of that time, but you have heard me speak during a number of years in recent years, have you not? A. Yes, more often than in earlier years.

Q. Have you at any time heard me urge people to take things by force? A. No, I never have.

Q. Have you in any private discussion on different matters heard me express that I would tell people to take things by force? A. No, I never have.

Q. Of course, you know that because of some address I made many years ago, I was given a vacation in jail? A. I do, yes.

Q. You say you have not heard that address? A. No.

Q. You have not? A. No.

Q. I did not expect you had. Have you any idea for what I was held—I mean after that expression? A. I think it was on some general charge of the police, arising from inciting to violence, or something of that kind.

Q. Have you any idea whether the violence took place? A. No, no violence took place, so far as my remembrance is concerned. I do not remember about 1893, but no violence as far as I know has ever taken place owing to any expression of yours, or that can be traced, that I can find in an honest opinion expressed by yourself.

Q. And you have read pretty much everything I have written? A. Not everything, perhaps, but nearly everything, yes.

Q. Then, you don't know whether at that time I was held for quoting Cardinal Manning? A. No, I don't remember that.

By Mr. Content.

Q. You were not present at this speech? A. No, sir.

Q. Which caused Miss Goldman's vacation, were you? A. No, I think not.

Q. Then you don't know whether the violence existed or not, do you? A. Yes, because I should have heard about violence if it had, I think.

The Court: Well, the point is, you have no personal knowledge one way or the other.

The Witness: Except I think, being intimately acquainted with Miss Goldman, I think I would have known of it if any violence had existed, or ensued.

The Court: That is a deduction. The point is that you don't know anything about the speech, one way or the other, or what

followed of your own knowledge. I think you told us you were a lawyer by vocation?

The Witness: Yes.

By the Court.

Q. So that you can gather what the question means? A. Yes, I do. That is true.

Q. Then I have put it correctly, have I? A. I think so.

By Mr. Content.

Q. Did you hear from Miss Goldman later that she was convicted upon an indictment charging her with unlawful assembly and inciting to riot? A. I don't remember whether I heard that from her or not.

By the Court.

Q. Are you a subscriber to *Mother Earth?* A. Yes.

Q. Are you a subscriber to *The Blast?* A. No.

Q. How long have you been a reader of *Mother Earth?* A. Since it was published.

Q. What is your recollection as to how long that is? A. I think it must be about ten years.

Q. And have you engaged in some matters of public discussion yourself? A. Yes, many times I have engaged in matters of public discussion.

Q. Without going into details, what generally has been the character of your work in that regard? A. The advocacy of taxation of land values, the Henry George system of taxation condition generally which tended toward liberty, more especially with regard to free speech.

By Miss Goldman.

Q. One question I forgot to ask you. You were always interested in the question of free speech? A. Always.

Q. Are you a member of the Free Speech League? A. I am a member of the Free Speech League.

Q. And have you had occasion to lead in the fight for free speech? A. Yes, I have.

Q. Have you had occasion to lead in the fight for free speech in my behalf? A. Yes, I have.

Q. Mr. Hall, you have written a number of books? A. A large number—so many I am ashamed to mention them.

By the Court.

Q. Just for a little information. I don't know that it is very germane, but I have never heard of the National Free Speech League. Can you tell us what it is? A. A small number of persons who believe that there should be no restriction upon speech; that the person should be allowed to say what they choose, being, however, responsible for the consequences of whatever they say, be held to account only to the consequences of what they say when they are interrogated. Free speech is the best safety valve for discontent and anything else that there is, and we are not afraid to hear what anybody else has to say, however wrongminded we think he is.

Q. Then, the principle of that organization to which you refer, and information in regard to which was elicited by Miss Goldman's question, is that any person may say what he pleases, the responsibility being only as it happens as a result of saying it—is that it? A. That is it.

Q. That is a doctrine involving saying what one pleases, whether the law countenances it or not? A. I think it does. We think that the statute guarantees the right of free speech, and that it does not mean free speech limited, it means free speech.

Q. If I gather it correctly, your belief, in this organization to which reference has been made, is one which permits any speech whatever, whether such speech is contrary to an existing statute or

not? A. Well, we think that ought to be allowed. Whether it is judicious or not, that is another point.

Q. But, the defense of free speech, to which you have just referred, includes, as I understand you, the right to say anything you please, irrespective of what the law at that particular time provides. A. That I think would be real free speech.

Q. Well, I mean to state the doctrine of this association to which you belong, and which was referred to by Miss Goldman as yours? A. Well, I would not say the association lays down any doctrine. They simply stand for free speech.

Q. Then, have I correctly stated your definition? A. My definition?

Q. Yes. A. Yes, I think so.

JOHN F. SKELLY, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Mr. Berkman.

Q. Your name is John F. Skelly? A. Yes.

Q. What position do you hold in the municipal service commission? A. Assistant secretary.

Q. Mr. Skelly, have you the record of William H. Randolph? A. Yes.

The Court: Now, I am very familiar with these things, and I think I can ascertain that for you.

Mr. Berkman: Yes, certainly.

By the Court.

Q. Now, you produce here a paper called "Application 77,746, index number 748, Examination 17"; then, "Notification February 5, 1907"? A. That's right.

Q. Now that application was received when? A. On January 28th, 1.10 P. M., in the year 1907.

Q. Now that application is signed William H. Randolph, 923 Brook Avenue, Bronx? A. Yes.

Q. In the body of the application what age is stated for the applicant? A. Twenty years of age.

Q. Now, what was the nature—this is from the Municipal Civil Service Commission files? A. Yes.

Q. What was the nature of the examination? A. For stenographer and typewriter, grade 1 and grade 2.

Q. Which is the higher grade? A. Grade 2.

Q. Now, what mark or percentage did Randolph obtain? A. Grade 1, 88.20%. On the grade 2, 88.20%.

By Mr. Content.

Q. May I ask what rating was given him May 9, 1907? I don't mean the date of the application. You gave us the date of the application before. A. Well, that was at the time of the examination, the list was promulgated. Of course, I don't know what that date is unless I look it up in the record, look up the records for that.

By the Court.

Q. Does that mean that he qualified? A. Yes.

Q. That means he successfully passed the examination? A. 70 per cent. is the required amount, and he received 88.20. Seventy would pass him.

The Court: Yes. Now, let the defendants see this paper.

Q. Now, what was the next examination of Randolph? A. Stenographer and typewriter, second and third grade. The list was established January 11, 1911. He passed the second grade examination with a percentage of 82.90. He was certified to the Board of Education on September 23, 1913,

but failed to report—that is, when he was certified, and received a certificate, he failed to report to the Board of Education, and consequently he was not appointed.

Q. That is, he failed to go up there to get the place? A. Yes.

Q. And therefore was not appointed? A. Yes.

Q. But the result of that, in turn, is that he loses his place on the list? A. Yes.

Q. Now, when was this application dated, Mr. Skelly? A. September 27, 1910, at 12.32 P. M. That was the date it was received, and the hour.

Q. And how old does he say he was then? A. Twenty-two years of age.

Q. And in giving his experience in other things, what, if anything, does he say as to employment in the Navy Yard? A. Four years, from 1907 to 1911, as stenographer and typewriter, appointed by the Secretary of the Navy, Navy Department, Washington, D. C., for duty in the Commandant's Office, Navy Yard, New York.

The Court: Now, we will pass that to the defendants.

Q. Now, did he apply again? A. Yes.

Q. He filed an application again for stenographer and typewriter? A. Second and third grade. The application was presented and received on March 26th, 1913, at——

Q. That looks like 2 P. M. A. Two P. M. At that time he gave his age as 25 years of age, with experience——

Q. Among other things, some experience in the Navy Department—I think it is five years? A. Five years.

Q. Did he pass that examination? A. Yes, he passed that examination, second grade 81.80%.

Q. And what was the date of the promulgation of the list? A. The date of the promulgation of the list was February 18, 1914.

Q. Now, at different times since 1907, have the examinations varied? A. Well, they did some, your Honor. That is to say, they are improving the conditions of the examinations, and make them so that they will fit the conditions as they arise each year.

Q. In the municipal service? A. In the municipal service. For instance, a person who passed the examination five years ago, or years ago, would not pass the examination to-day unless he was more qualified with knowledge of the examination.

Q. Well, in other words, is it fair to say, from your experience in the Municipal Service Commission, that it is constantly raising the standard of qualification? A. They are.

Q. And as time goes on, more severe tests are applied to the applicants? A. Yes.

Q. Is that a fair statement? A. That is a fair statement.

The Court: Now, Mr. Skelly has also brought Mr. Randolph's application for patrolman, and his per cent., but that has nothing to do with the stenography.

Mr. Content: Would your Honor introduce it, just to show when he was appointed patrolman.

The Court: Yes.

Q. Well, Mr. Skelly, you produce application No. 34,304, for patrolman. Is that correct? A. Yes.

Q. And the index number is 40,677, and what is the date of that application? A. This application was received July 12, 1910, at 12.49 P. M.

Q. And what was the percentage that Mr. Randolph attained in that examination? A. 88.48.

Q. And the passing mark for that is 70, too? A. Seventy per cent. There is also a physical requirement necessary in the patrolman's examination.

Q. In addition to the mental examination, and

qualifications in that regard, of course the officers have to pass a physical examination? A. A physical examination.

Q. But this mark is the same for his mental qualification? A. Seventy per cent. is the percentage mark, and he received a percentage of 88.48, and he was appointed to the Police Department on November 8th, 1911, and up to the present time is still in the employ of the Police Department, as far as our records show.

By Mr. Content.

Q. May I ask, have you your records there? Was the index number on the first examination 748—have you got that first record? Just give me the first examination, about which you have testified. A. The index number was 748.

Q. Now, I show you a letter addressed to William Randolph, 923 Brook Avenue, and ask you was this the regular notification of the Municipal Civil Service Commission? A. That is our form blank.

Q. That form is dated May 9, 1907? A. Yes.

Q. That would be the date of the notification that the applicant had passed; is that correct? A. Yes.

Mr. Content: I don't offer this letter in evidence.

Q. Just look at this notification, which I produce, and see what the percentage is—will you read it into the record—88.21? A. 88.21.

Q. That is right? A. That is right.

Mr. Content: This is the notification of May 9, 1907.

Q. Now, I show you another one, dated January 25, 1911, and ask for the index number of the second examination about which you testified—is the number 1446? A. Yes, it is.

Q. And is the grade that you have there? A. 82.90.

Q. That shows he passed with that rating? A. Yes.

Mr. Content: And this notice is dated January 25, 1911.

Q. Now, let me call your attention to this. You stated that in 1913 he was passed as a stenographer and notified to report, but he did not report? A. Yes.

Q. Wouldn't your records be explained by a reference to the fact that he was appointed a patrolman prior to 1913? A. Well, we don't know.

Q. Well, I mean by looking at your record now? A. Yes, we don't do that.

Q. You don't at all? A. Yes—we have so many positions they are all different lists.

The Court: It so happens that before that time Mr. Randolph was then in the police department, and his failure to report is perfectly explainable in having a position in the police department.

Mr. Content: That is just what I wanted to bring out.

Q. So that at that notification, in 1913, according to your records, he had been appointed a patrolman? A. Yes. May I explain? When a requisition is made upon the Civil Service Commission, by the Department, we certify the names to that Department. The Department in turn notifies the candidates to appear. If they do not appear within the period of five days, it is equivalent to their declining the offer. The Department then in turn notified the Civil Service Commission of the failure to report, of the man or the candidate, whoever he may be. We insert that in our records, so that if at any time any question should arise,

we refer to our records, and know just exactly what was the cause of this man's declination, or why he was not certified.

Q. Now, I understand, from your records, in 1913, when he was ordered to report by the Education Department, he had already been in the employ of the Police Department as a patrolman? A. He was.

Q. Now, is your third examination index number 2424, the third record about which you testified? A. It is 2424, the index number.

Q. And is this notification, February 19, 1914, correct, and he got a percentage of 81.80? A. 81.80 is correct.

Q. And from that I understand, in regard to the point which is in the question Judge Mayer asked you, the examination of 1914 should, in the course of events, be stricter than that of 1907? A. Yes.

By Mr. Berkman.

Q. Mr. Skelley, if I understood you, of course right, the percentage in the first examination of Mr. Randolph was 88.20? A. 88.20 is right.

Q. And the second was 82.90? A. Yes.

Q. That is a falling down, that is a decrease in percentage, that percentage decreased?

The Court: He says the standard has been constantly increasing, and he repeats that now.

Q. But, so far as these figures show, the percentage of Mr. Randolph decreased on the second examination.

Mr. Content: The figures speak for themselves. 81 is lower than 88. You can understand that.

Mr. Berkman: I wanted to be sure about the figures.

The Court: The figures are perfectly clear.

Q. And the figure for the final examination is still less, 81? A. 81.80, you are right.

Q. Mr. Skelley, you testified that Mr. Randolph took the examination as a third grade stenographer? A. Second and third grade.

Q. What is his percentage of speed—how many words a minute can he write? A. Of speed?

Q. Yes, as a stenographer—how many words a minute did he write? A. Well, the examination and advertisements called for 120 to 130 words.

Q. That is all, 130 the maximum? A. The maximum was 130. This is the advertisement; you may read yourself.

The Court: Yes, what date is that?

The Witness: March 12, 1913.

Q. Is it marked down there how many words Mr. Randolph wrote on his first examination?

Mr. Content: No, he has specified as to what the requirements of the examination were.

Mr. Berkman: Then we will figure that out.

The Court: You can't very well.

The Witness: All persons passing the examination will be rated as second grade stenographers and typewriters, all passing with a percentage of 81 will be rated as third-grade stenographers and typewriters, provided they also qualified on the 120 and 130 word tests.

Q. And 130 would have to be the maximum? A. Yes.

Q. He would have to have 100 per cent. to pass 130? A. No, they don't rate them that way, according to the number of words they write. There is a time limit, a speed limit, an accuracy limit.

Mr. Content: Is there a word requisite?

The Witness: Yes, and then they are rated on what we call weights in the examination.

The Court: Now, if you will permit me, I think I can make this clear. The examination of 1913, March 12, says, "Public notice is hereby given that applications will be received from Wednesday, March 12, 1913, to 4 P. M., March 20th, 1913, for the position of stenographer and typewriter, male and female, grades two and three"—I will omit immaterial matters—"the date of the examination will be fixed later. The several weights of the examination are as follows: Dictation 6, of which rapidity in taking shorthand notes will count two, and accuracy will count four; tabulation 2, and facility in deciphering notes; speed 1, in transmitting from plain copy to machine; spelling 1. 70 per cent. will be required for the dictation test, and 70 per cent. on all in the dictation test. Four ratings will be given, one of 100 words, one of 110 words, and 120 words per minute, and one of 130 words per minute, carrying the ratings respectively, of 70 per cent., 80 per cent., 90 per cent. and 100 per cent. on rapidity. In the rating carrying exactness, correctness of form, neatness, freedom from interlineations, alterations, etc., will all be considered. Time limits will be set in connection with each test."

Then it goes on with "they must furnish their own note books. All persons passing the examinations will be rated as second grade stenographers and typewriters. All passing with a percentage of 85 will be rated as third grade stenographers and typewriters, provided they also qualify on the 120 and

130 words tests. Salary from $600 to $1,650 per annum."

Now, in the other advertisements, in regard to the other examinations, they are the same general tenor, with, however, different details in a great many, and different tests.

Now, will you let me ask this one question.

By the Court.

Q. Of course, I know you are not in an examination department; but are you able to tell us whether the examination, in part at least, is conducted under the supervision of an expert stenographer? A. Well, by an expert examiner, who takes the time and who has the time in his hands, and announces to the candidates the time that they will be given for that particular paper, that is on that particular paper, and then they count the words per minute, so that they take the dictation, and the moment that the time is up the clock stops, and the announcement is made to quit.

Q. When all this is done, are the results of all that examined by a stenographer? A. No, by an examiner.

Q. I don't mean that, is he a stenographer? A. No, sir.

Q. Not necessarily? A. No, sir.

Q. I see. So that they decide by the translation by the applicant of his stenographic notes into readable English? A. Yes.

The Court: Is there anything else you want?

Mr. Berkman: Yes. There are complicated figures there that we would like the witness to tell us, as one familiar with these examinations. Please tell me what would be the maximum speed of words per minute at

which an applicant could write, to pass an 81.80.

Mr. Content: Now, how can he tell that? The man may have written five hundred words a minute. He testified to the requirements, that he should write not less than 120, and not more than 130, that is the requirement.

The Court: I can explain it to you, I am so familiar with the thing. The Civil Service Commission arranges certain ratings that are to be given to each thing. It is exactly the same, we will say, as an examination for entrance to a college, or an examination when a man is in college. So much is given to this subject, so much to that, so much to the manner in which a thing is done, and so forth and so forth.

So that when an applicant is submitted to an examination a regular Civil Service Commission examiner is assigned to that meeting, of course, but with the standard that has been given him, but of the percentage that the man should have, so much is for speed, so much is for accuracy, and so forth.

Now, there is no way of telling, so far as these records show, at least, the precise number of words that a man, a given candidate was able to write in a given time, excepting that in order to pass one of these papers, shown him, he must be able to write 120—between 120 and 130 words, or something to that effect. That is all there is about it. We could not any more figure out what he actually did than you could work out the legendary Chinese puzzle.

Now, Mr. Skelley has taken the totals of two of these examinations from the files. If you want them, you can have them. I will

read it—this is a little complicated—I call your attention to it in view of the fact that Mr. Skelley has called my attention to it, so that all the facts may be fully in evidence; in the examination where the applicant received 82.90, the list established January 11, 1911, on speed he received 90, accuracy 82, spelling 100, copying 74. Now, each of those is multiplied by the ratings that you heard me read before, so that it would be 90 multiplied by 2 is 180 for speed; 82 multiplied by five is 410 for accuracy; 100 multiplied by one is 100 for spelling; 74 multiplied by one is 74 for copying; that total is 764; transcription 65, making a total of 82.90.

Mr. Content: That is the same one about which Mr. Skelley testified?

The Court: Yes. Now, the last examination, where he received 81.80, Mr. Skelley has an extract from the records of the Civil Service Commission as follows: Third grade requires an average of 85 per cent., and 120 or 130 word test: 91 multiplied by one equals 91; 95 multiplied by 1 equals 95; 55 multiplied by two equals 1110; 87 for speed, multiplied by two, is 174; 87 for accuracy, multiplied by 4, is 348. That totals 644, with a result of 81.80.

Now, the third grade is higher than the second. The notification is for a third-grade stenographer.

On his transcript he transcribed the dictation given at 120 words a minute. He therefore failed to get the general average of 85 per cent. on the entire examination, required by the terms of the advertisement.

Q. Now, let me ask you about that. You found from the records they showed he took dictation at 120 words a minute? A. Yes.

Q. But on some other elements, like spelling, or other matters, he did not sustain that 85 per cent.? A. No, sir.

Q. Is that correct? A. That is correct.

Q. So that that was a passing examination for the second grade which fell a little under the third? A. Fell a little under the third.

By Mr. Content.

Q. May I ask, just as a summary, that he passed satisfactorily, the examinations on three different occasions? A. Yes.

By Miss Goldman.

Q. Can you tell us whether Mr. Randolph is a duly qualified stenographer in the Police Department now? A. He is a patrolman now, so far as I know, that is as it was.

Q. He is not a police stenographer then? A. No.

Q. Well, what I really wanted to ask you—you will pardon me if I don't use the exact terms—whether he is a qualified stenographer in the Police Department? A. He has never been appointed as a stenographer to the Police Department.

Q. He has not? A. No.

Examination by Mr. Berkman.

Q. I want to make sure, I did not hear everything. Did I hear him say Mr. Randolph passed or did not pass the last examination?

The Witness: Which examination?

Q. The last—I did not hear the year 1913, or something. A. He filed applications on three times, for the position of stenographer and typewriter, he took the examinations, and passed the three examinations. He also filed an application for pa-

trolman, and he passed the examination for patrolman, and was assigned as a patrolman and was reported as a patrolman.

By the Court.

Q. What percentage in that examination was given for one to become a third-grade stenographer? A. 85 per cent.

Q. And I will ask you again, for clearness, the lowest in grade is 1? A. Grade 1.

Q. And 2 is higher, and 3 higher than that, and so on? A. There is a fourth grade, where they take notes, a court stenographer.

MARY ELEANOR FITZGERALD recalled.

Direct examination by Miss Goldman.

Q. Miss Fitzgerald, a check of mine, signed by you, was brought into evidence? A. Yes.

Q. I want to ask you about the power of attorney which I gave you. Do you recall what was the particular occasion of my giving you the power of attorney? A. I do.

Q. What was it, please? A. It was on the 14th day of June that I went to the bank with you.

Q. You went to the bank with me? A. Yes.

The Court: 1917?

The Witness: 1917, June 14, 1917.

Q. What bank, please? A. The New York Produce Exchange, the Harlem Branch.

Q. I had intended to ask this question later, but I state it now: What was the occasion, why should I suddenly, since I never had given you power of attorney before—what was the occasion of my giving you power of attorney at that particular date? A. You had been threatened with arrest

by Marshal McCarthy, on the night of June 11, at the meeting at the Royal Palace on 114th Street.

Q. Was there anyone else at that meeting who suggested arrest? A. Mr. Content said he was sorry he was not an officer, he would like to arrest you.

Q. Then you went with me to the bank, and I gave you a power of attorney, expecting a possible arrest? A. Yes.

Q. Have you any knowledge whether I—do you remember my drawing any money? A. I do.

Q. How much? A. You drew a check on—you cashed a check for $500.

Q. Are you sure I cashed a check? A. Well, you drew——

Q. Drew some money? A. Drew some money from the bank, from your deposit.

Q. Will you please be good enough to say how I drew the check, the money? A. It was from a fund that you had of $3,000, out of which you drew $500, as I remember it, from that fund.

Q. What was done with the $500? A. $300 were turned over to the *Mother Earth* account, for the magazine, and $200 was a debt that you owed Mr. Berkman.

Q. In giving you the power of attorney, because of the threatened arrest, what was the purpose of giving the power of attorney to you? What was my conversation when I gave you the power of attorney? A. So that I would be able to write checks in case you were arrested.

Q. You said I drew $500 from a fund of $3,000. Did you have any knowledge of the source of that fund? A. I have.

Q. Where did it come from? A. It was given to you by a man named James Hallbeck, an old friend of yours.

By Mr. Berkman.

Q. After reading Miss Goldman's letter at the committee meeting of the No-Conscription League —Miss Goldman's statement or letter, whichever you call it—on May 23, at that meeting did the League take any decision with regard to registration, or its attitude upon registration? A. It did.

Q. What decision or position did the League take? A. That the League would not advise people to register or not to register, it was a matter of individual conscience.

Cross-examination by Mr. Content.

Q. You have testified to some alleged conversation I had with Miss Goldman on June 11. Will you please state that entire conversation between myself and Miss Goldman, and not fragments of it? A. As I remember it, I will try to state it to you. I think Miss Goldman——

Q. Wasn't I near the door? A. You were in the hallway.

Q. Near the exit? A. Near the exit. And Miss Goldman said to you, why are you hustling and pushing—or why do you allow the soldiers and police to hustle and push men, when you know they are over the age of this examination, 21 to 25, and you said that you were not a police officer, and Miss Goldman said, "You acted like one," and you said, "I am sorry I am not one, I would like to arrest you." I think I have stated it.

Mr. Content: I think that is fairly accurate.

Q. Would you allow me to ask this: It is my memory that Miss Goldman started the conversation, and not myself. Is that correct? A. Why, she said to you, why do you permit the soldiers——

Q. I mean, she spoke to me first, and not I to

her—I mean she spoke to me first, and then I spoke to her then. A. I think she spoke to you first.

Q. And that was as she was going out? A. As she was going out.

Q. And you were with her? A. Yes.

Q. And I was standing at the door? A. In the hallway, some distance from the door, going into the balcony, or the exit, and you were about halfway between in that hall.

Q. There was a hallway leading from the balcony? A. Yes, into some sort of a flight of steps.

Q. You had to go up a few steps to get to the hallway? A. Yes, but you were in the hallway.

Q. Near the exit? A. About halfway between the two doors.

Q. Up in the balcony? A. No.

Q. Is it true the Marshal was in the balcony at that time? A. Yes, we had just left the balcony at that time.

Q. Isn't it true that Miss Goldman asked me, "Mr. Content, this is an outrage, the holding up for registration cards of men of about forty years of age"? A. That is true.

Q. Something of that sort? A. Yes, men of that age, and older were.

Q. And didn't I tell her that was in charge of the Marshal, that I was a lawyer, not a police officer? A. I did not hear her tell you as to that.

Q. And then she said I acted like a policeman? A. She said you looked like an officer.

Q. Well, policeman, I think she said, and then didn't I reply, "I wish I were," I might lock her up? A. You said, "I wish I were, I would like to lock you up."

Mr. Content: That is it. That is right.

Q. That was the whole conversation. But you will admit I did not start anything myself? A. No, Miss Goldman did speak to you first, as a

public officer, you were there with the soldiers. And I think she felt you had the right.

Q. I merely expressed a great desire to lock her up, and not a threat? A. It can be turned either way, I suppose.

By Miss Goldman.

Q. Then you remember my asking Mr. Content as to whether it was necessary to hustle people by soldiers? A. Yes, I think so.

Q. Was I in any way discourteous to Mr. Content? A. You were not.

Q. I spoke quietly? A. You did.

Q. And frankly asked for information? A. You did ask for information.

Q. Was Mr. Content very courteous when he answered? A. Well, when he said, "I would like, —I wish I were an officer, I would like to arrest you," it was not a courteous tone.

By Mr. Content.

Q. That was after Miss Goldman said to me that I was æting like a policeman? A. You said that after she said that.

By the Court.

Q. You say that on May 23rd, the League came to a decision? A. Yes.

Q. Who was the chairman of that meeting, if there was one? A. I think Mr. Berkman was chairman of that meeting.

Q. Was any resolution put? Did anybody offer a resolution, "Resolved that the No-Conscription League do or do not do such things, such and such matters"? A. I don't know that it was put in the form of a resolution. When Miss Goldman's letter or statement was read, Miss Goldman's statement was read, then there was a general discussion, and some of the delegates from those anti-

militaristic leagues, some of the members of the No-Conscription League, some were for registration, and some against registration, and so on, and then finally I know that no stand was taken by the league.

Q. Now, that is a conclusion. Did anybody put the question to a vote, an aye and nay vote of the people there present? Now I am asking a very simple, direct question: Was any specific vote taken, an aye or nay vote taken? A. I don't know.

Q. You don't know? A. I don't know whether there was one or not.

Q. Will you say it was done, or that you don't know anything about it? A. I don't know whether such a vote, such an nay or aye vote was taken. I don't know that. But I do know there was discussion.

Q. But, answer the question. I am not asking for, I am not talking about discussion around the circle, but where twenty-five or thirty or forty or whatever number of people were there, you don't know whether such a vote was had? A. The form of a vote, I don't know.

Q. Do you know whether the question was put? A. The question was put, yes, and there was discussion on it.

Q. By whom—what was the question? A. The question whether—the stand the league shall take in this matter, whether they—this is as I understand——

Q. Who put the question? A. It all came up after reading Miss Goldman's statement.

Q. Who put the question? A. Mr. Berkman brought up the discussion.

Q. What did he say? A. Why, the statement was he was trying to bring out, to encourage the others——

Q. Just one moment. You have been here long enough now to know I am asking for words or

their substance. What did Mr. Berkman say? A. After Miss Goldman's statement was read Mr. Berkman made a few remarks of his position on registration, and asked for a discussion of the people that were in the room, which followed.

The Court: All that has been brought out so far, as I understand the testimony—the jury will take their own view of it—is that some people said that they would not register, and some said they would.

Q. Now, I want to know if at any time in the course of that meeting a definite question was put to the persons present, and the persons there present answered that question in regard to a resolution not to urge people not to register. Now you can answer that yes or no, or state you have no recollection? A. I don't know whether it was put in the form of a vote, your Honor.

Q. Well, will you say you don't know or—— A. I was not in the room all the time, I was in the hallway.

Q. Now then, when you were at that meeting, so far as you were there, there was no such matter in distinct words framed and put to the persons to get the view of each and every person present? A. You mean about the letter?

Q. What I am getting at is was it framed in words—the language I am not particular about—"do you favor our interfering with registration?" or, "Do you favor our not urging people not to register?" Was anything in substance said to the persons present in that manner? A. The meeting—

Q. Answer yes or no. A. I don't know.

Q. You don't know? A. I don't know that we put it in that form. It was a discussion of the people, and they discussed whether——

Q. Now, answer my question. A. Whether it was put to those people—you mean put the motion to each to give his views on the subject?

Q. Yes. A. Yes, sir; but all that was an informal meeting.

Q. Can't you answer the question yes or no. A. Yes, sir; there was a discussion, that is all.

Q. Can't you answer my question? It is a perfectly simple question—was that put to that meeting? A. I don't know that it was put in that form.

Q. Was there any vote taken upon any proposition. I don't mean in formal language, but was there any vote taken so that you knew how each and every person stood? A. There was no vote taken like that. The different ones expressed their views, and they were not pinned down, and written down.

Q. There was no minute of any kind taken, any memorandum? A. No, there was not a vote, or a minute of the meeting. It was an informal meeting for discussion.

Q. Now, in addition to the members of the No-Conscription League present, there were these people you called delegates from other organizations? A. Yes, sir; they expressed their views.

Q. They had nothing to do with the No-Conscription League, did they? A. They came to——

Q. I don't care about that, but they had no part in the programme or the policy of the League? A. No, sir; they were in sympathy with our work, and they came in because we happened to have a conference there.

Q. But they had no part in determining the policy of the No-Conscription League, what it should be? A. No, they were independent, but they expressed themselves there.

Q. Is it your statement in answer to the question that the League, then, according to your testimony, passed upon what you have termed an informal discussion, is that your answer? A. You ask me what stand the League took, or passed at that informal meeting.

Q. Yes. A. It was an informal meeting, and at that time it was stated emphatically by us that

we should give no advice as to people registering or not registering, but it was not written down in the form of minutes.

Q. Was that ever written in any form, whether in printing or circulars, or anything else? A. I think some of the form letters we sent out had such a statement.

Q. You do think so. Do you recall which letter? A. I would have to look them over, but I am sure that some of the written matter contained that statement, that the matter of registration was left entirely to his own conscience. I think you will find that in our literature and matter.

By Mr. Berkman.

Q. You have been present on various occasions when I was chairman of the meeting? A. I have.

Q. Did I put any matter ever to a vote? A. No, sir; you did not.

Q. Why not? A. It is not the custom at anarchist gatherings.

Q. When I was chairman of this no-conscription informal meeting of May 23rd, did I on that occasion, or any other occasion, put any question in a formal manner? A. No.

Q. Did I only want each one person to express their views? A. Yes.

Q. Did I put any question in any form at all, that was formal like a regular meeting? A. No, the meetings were all informal.

Q. Is a vote ever taken at any of our meetings? A. No.

Q. Either public or private? A. No.

By Mr. Content.

Q. Do they ever put questions at an anarchist meeting? A. You mean ask questions, or a lecture.

Q. No, do they ever put a general question to the members present, to the audience in an anar-

chist meeting, a question that is submitted by the chairman—ever put a question to the audience to be answered affirmatively or negatively? A. Well, sometimes questions are asked.

Q. Now, do you say, as I understand you, that at an anarchist meeting you never put a question to a vote, is that correct? A. In our meetings, and planning our work, we do not have a formal vote, where we ask the person to say aye or no, etc.

Q. You do not? A. No, sir.

JAMES HALLBECK, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Mr. Berkman.

Q. How old are you, please? A. I will be eighty years my next birthday, in November.

Q. Where were you born? A. In Sweden.

Q. How long have you been in this country? A. Fifty years and three months.

Q. Are you a citizen? A. Oh, yes; for forty years.

Q. How many years? A. Forty years.

Q. You are not in active business now? A. No.

Q. You have retired? A. Yes.

Q. You live on your income? A. My income is an annuity.

The Court: He has an annuity.

Q. Have you known Miss Goldman a long time? A. Yes, I think for nearly thirty years.

Q. Have you known Alexander Berkman for a long time? A. Not so long, I guess about three years.

Q. Did you ever see Mr. Berkman in San Francisco? A. Yes.

Q. Did Mr. Berkman ever visit you in your hotel at San Francisco? A. Yes.

Q. Do you remember a visit on one occasion in which Mr. Berkman explained to you that he wanted to publish a paper? A. Yes.

Q. In San Francisco? A. Yes.

Q. Did you contribute toward the publication of that paper? A. I did.

Q. For *The Blast?* A. For *The Blast.*

Q. Did you contribute on several occasions for *The Blast?* A. Yes.

Q. Contributed money? A. Yes.

Q. Various sums? A. Yes.

Q. Did you contribute in the past toward the *Mother Earth Magazine?* A. Yes.

Q. Were you interested in *Mother Earth?* A. Yes.

Q. And sent money now and then? A. Yes.

Q. You were living at the time in San Francisco? A. Yes.

Q. How long are you in New York? A. It will be one year the 11th.

Q. One year on the 11th? A. Of this month.

Q. On the 11th of this month? A. Yes.

Q. Do you remember seeing me in San Francisco before you left for New York? A. Yes.

Q. Do you remember how long you are in New York—do you remember I came from San Francisco to New York? A. Yes.

Q. Did you come up to see me? A. Yes.

Q. Do you remember the date approximately when you came up? A. Well, no; not exactly, I don't remember.

Q. Where did you come up to see me?

The Court: He says he don't remember. I will let you ask him the date. Perhaps that will help him.

Q. About the 19th of January, I think, I am not sure about that. It was about that time? A. All right.

Q. It was in January? A. In January.

Q. You came up where to see me? A. I came up to see you in Miss Goldman's.

Q. At Miss Goldman's office? A. Yes.

Q. At *Mother Earth?* A. Yes.

Q. Was that in 20 East 125th Street? A. Yes.

Q. In which room, if you know, Mr. Hallbeck? A. On the third floor, on the third floor.

Q. How many flights of stairs did you go up? A. No, no; it was on the second floor at that time, I remember.

Q. Was it in the back room? A. Yes.

Q. When you came in, did you ask for Mr. Berkman? A. I did.

Q. And they showed you into my office? A. Yes.

Q. Do you, or did you know I was any time interested in that prisoners' ball? A. Yes.

Q. Do you remember personally receiving ball tickets from me? A. I did.

Q. Do you know, or do you remember paying money for the ball tickets? A. Yes.

Q. Tell us what you did when you were sitting there talking? A. I gave a check to Miss Goldman.

Q. For how much? A. Three thousand dollars.

Q. The check was cashed?

Mr. Content: Was the check cashed, the question should be.

Q. I mean was the check cashed? A. (No answer.)

Q. When you gave the check to Miss Goldman for $3,000, do you remember saying anything?

Mr. Content: I object.

Q. What did you say to do with it? A. Helping the issue of *Mother Earth*, and lectures, etc.

Q. You said the money is for the purpose of issuing *Mother Earth*, lectures, etc.? A. Yes.

Q. Did the bank send the cancelled check back to you? A. Yes.

Q. Have you the cancelled check with you? A. Yes.

Q. Please produce it.

(Produced by witness.)

Miss Goldman: I would like to put that in evidence, your Honor.

Mr. Content: No objection.

The Court: Let the clerk mark it.

(Marked in evidence as Defendants' Exhibit A.)

Miss Goldman: The check is dated New York, January 23, 1917; it is from the Equitable Trust Company of New York. It is made out to the order of Emma Goldman, $3,000, and signed by Mr. James Hallbeck.

By Miss Goldman.

Q. Mr. Hallbeck, when you were courteous enough to hand me the check, did you or did you not say that it is for your work, Miss Goldman? A. Yes.

By Mr. Content.

Q. How old did you say you were? A. I will be eighty years in November.

By the Court.

Q. What has been your business, Mr. Hallbeck? A. A tailor by trade.

Q. How long have you been retired from business? A. About seventeen years.

Q. And you have this annuity, do you? A. Yes.

By Mr. Berkman.

Q. Notwithstanding your great age, Mr. Hallbeck, how is your memory? A. Pretty fair.

WALTER BRODIE, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Mr. Berkman.

Q. Mr. Brodie, where do you live? A. I live at 228 South Third Street, Brooklyn.

Q. What is your occupation? A. I am a contributor to magazines.

Q. What magazines, for instance? A. I am a contributor to the *Atlantic Monthly,* the *Outlook,* the *Seven Arts,* and various other magazines; have also been associate editor of several magazines, but not at the present time.

Q. Are you connected in some way with the Red Cross? A. Well, I am not exactly connected, but some of my work is going to be used, is going to be sold for the benefit of the Red Cross, and some song of mine has been set to music for the benefit of the Red Cross.

Q. Have you something to do with a fund for the Belgian war sufferers? A. Why, part of my time has been spent for the amelioration of the poverty of professors and artists ruined by the war, that is to say, collecting funds for the benefit of Belgian professors and artists of schools ruined by the war.

Q. Have you also contributed work for the benefit of the Canadian wounded soldiers? A. Yes.

Q. Were you at the Harlem River Casino meeting May 18? A. Yes.

Q. Are you a native of this country? A. No.

Q. Where were you born? A. I was born in Russia.

Q. Where? A. Russia.

Q. In Russia? A. Yes.

Q. Had you attended any of our meetings before? A. No.

Q. That was the first meeting? A. That was the first meeting, that was the first time that I attended.

Q. That was the first meeting you attended? A. Yes.

Q. Did you hear Miss Goldman speak at that meeting? A. Yes, I heard her.

Q. You came specially to hear Miss Goldman? A. I came specially to hear the opinion of the organization, and organized opinion of the conscientious objectors, because I was a conscientious objector, and I wanted to know what to do in connection with registration, and I wanted to hear the organized opinion of conscientious objectors in regard to registration.

Q. In regard to registration? A. Yes.

Q. You say that that is the purpose with which you came to the meeting? A. Yes, sir; that was the purpose, in order to get advice, and find out, as I said before, the organized opinion of conscientious objectors in regard to registration.

Q. What was the advice received there? A. Well, I could get no definite advice on the subject.

Q. You did not get any definite advice? A. No, sir.

Q. You heard the whole speech of Miss Goldman? A. I heard the most, sometimes the noise drowned her, but the most important parts I think I heard.

Q. Did you hear her say, "We believe in violence and will use violence"? A. I heard nothing of that sort.

Q. You heard nothing of that sort? A. No.

Q. Did you hear anything that sounded anything like that? A. No, quite to the contrary.

Q. Please explain what you mean. A. I heard her repeatedly during the meeting, asking the audience to refrain from answering any attempts at violence on the part of the soldiers. Repeatedly I heard her say that.

Q. Do you remember what you heard her say? A. I heard her ask the audience that they should refrain from answering these attempts of violence on the part of the soldiers.

Q. Did you hear Mr. Berkman speak at that meeting? A. I heard him but I could not hear him very distinctly.

Q. Did you hear Miss Goldman tell the audience that she advised them not to register? A. No, that is exactly what I did not hear. I thought I would hear it, but I did not hear it.

Q. You came to hear that? A. I was under the impression that Miss Goldman stood for that, but I came to the meeting and found Miss Goldman did not stand for that.

Q. You thought Miss Goldman stood for the advice not to register, and you found she did not stand for that? A. Yes.

Q. So you must have been disappointed? A. I was disappointed.

Q. Were you disappointed in my speech? A. I did not hear your speech.

Q. Were you very anxious to get definite advice with regard to registration? A. Yes, that was the reason I went to the meeting.

Q. What did you do besides going to the meeting to get advice? A. Well, after, because I was unable to get definite advice at the meeting, I thought I would go over to the headquarters of the No-Conscription League, and find out whether they would give me definite information on the subject, whether they would give me any definite advice.

Q. You came to the headquarters of the No-Conscription League to get definite advice? A. At 20 East 125th Street.

Q. 20 East 125th Street? A. Yes.

Q. You went up there to get definite advice? A. I went for the purpose of getting definite advice on the subject of registration.

Q. Did you get definite advice there? A. I went up to the No-Conscription League——

Q. Did you see me there? A. No.

Q. Miss Goldman? A. No.

Q. You saw someone else? A. I saw two gentlemen who said they were connected with the No-Conscription League.

Q. Do you know who the gentlemen were? A. I don't know them by name. I remember them very, very slightly.

Q. You spoke to them for advice, from the No-Conscription League? A. I told them I was a conscientious objector, and that I was unalterably opposed to national conscription, but in connection with registration I was undecided, and wanted definite advice on the subject.

Q. You asked for definite advice, and what advice did they give you? A. They told me that they could give me no definite advice on the subject, but advised me to do exactly as my conscience demanded. Furthermore, they said that the opinion of the no-conscription leagues in the United States was divided on the subject, and several of them were in favor and several were not; and that the No-Conscription League in particular, also, was undecided on the subject, some of the members were in favor, and some of them were not, and so they decided to say that their position was to leave it entirely to the conscience of the individuals.

Q. So that you got no definite information? A. No.

Q. You got no advice there on registration? A. Yes, no advice.

Q. And they told you the League left it to the conscience of each individual, to go according to his best understanding? A. Yes.

Cross-examination by Mr. Content.

Q. Who were the speakers at the May 18th meeting? A. Well, I don't remember all of them, but

those I do remember were Mr. Berkman and Miss Goldman, and I think Mr. Weinberger, Mr. Leonard Abbott, and a few others, but I do not remember the others.

Q. Were you in court this morning? A. Yes, I was waiting for my turn.

Q. Did Miss Goldman, according to your recollection, make any mention of the word "register" or "registration," in her speech? A. Yes.

Q. What did she say? A. She said there were many men who will not register.

Q. She said that? A. Yes.

Q. Did she then give the source of her information in her speech? A. She did not. But that did not satisfy me.

Q. Did she say anything else about registration, to your recollection? A. Nothing else.

Q. Did she say anything about conscription? A. About conscription—I don't remember exactly, in exact words, but in general, she discussed it as being immoral and illegal.

Q. Did she mention the names of any American statesmen, Congressmen or Senators? A. I don't remember that.

Q. Do you remember whether she mentioned the name of La Follette? A. No.

Q. Did she say this, "How many people are going to refuse to conscript, and I say there are enough. I would count at least fifty thousand"? A. I don't remember any of the words that she said definitely. I can only remember the gist of what was said.

Q. Do you remember positively that she did not say this: "How many people are going to refuse to conscript, and I say there are enough. I would count at least fifty thousand, and there are going to be more, and they are not going to when only they are conscripted. They will not register"? A. I don't remember that.

Q. Didn't you say a minute ago she said a number of them would not register? A. Yes, I heard her say that, but I did not hear those words.

Q. How often was the word "register" or "registration" used? A. Only once, that only once, as I recollect.

By the Court.

Q. Are you sure about that, or is that just your present recollection? A. Well, I can only speak from my present recollection.

Q. I mean, would you say she did not say that, or are you merely stating your recollection that she said it once? A. I can only recall she said it once.

Q. I understand you to say she used the word "violence" in connection with the soldiers? A. Yes.

Q. And that word "violence" was used at what time? A. Well, I don't remember the exact time she did it, but I remember, as I said before, I can only remember the gist of what she said, a general impression, not exact words, and I remember she said repeatedly, urged the audience to refrain from answering the attempts at force or violence—I don't know which word she used—on the part of the soldiers, and I also remember of one time the word was passed along to the audience that the soldiers were going to begin some kind of a riot, and to be prepared, and not to answer it in any way.

Q. Well, you testified on the direct that you heard her say in effect that they were not to answer any attempts of violence on the part of the soldiers? A. Yes.

Q. Were any inquiries made by the audience as to whether they were in favor of registration or not? A. No.

By Mr. Content.

Q. The audience took no part then, or there was no question on registration, or not? A. No.

LEONARD D. ABBOTT, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Miss Goldman.

Q. Mr. Abbott, what is your profession? A. I am a magazine writer.

Q. Are you connected with any particular magazine at the preesnt time? A. I have written for many magazines.

Q. Are you connected with a magazine now? A. At the present time I am a free lance writer.

Q. Mr. Abbott, have you attended any of the meetings of the No-Conscription League? A. I attended the initial meeting, at which the No-Conscription League was organized, two meetings, the two largest mass meetings.

Q. At the initial meeting, where did that take place—was that on May 9th? A. It took place in your apartments, I don't remember the exact date.

Q. May 9, I think. Can you remember, first of all, the purpose of that meeting? A. The conference was called to express our opposition to militarism, conscription, and to the war.

Q. Do you remember a discussion taking place on the subject of conscription? A. Yes.

Q. Was there any issue discussed in regard to a large meeting to come before the public? A. That was one of the chief purposes of the meeting, or conference, to arrange a public meeting.

Q. Do you remember anything else discussed at that time, in relation to the main purpose? A. Yes, we discussed the purpose of the League, the platform on which we stood, the principles we proposed to defend.

Q. What was the next meeting you attended, Mr. Abbott? A. The next meeting was the public meeting, the meeting in the Harlem River Casino, a public meeting.

Q. Did you preside at that meeting? A. I did.

Q. When I spoke, when you introduced me, and while I spoke, were you in a position to listen attentively? A. I was in a position to hear every word that was said by any speaker.

Q. Have you any recollection of my saying, "We believe in violence, and we will use violence"? A. I have not the slightest recollection of any such statement. In fact, I would say very confidently that if that statement is credited to your speech that night, it must be some kind of an interpolation. As I remember your speech that night pretty distinctly, and I do not remember any passage in your speech that would be relevant to that. It don't hitch up with your argument.

Q. Do you remember at any time in my speech, my telling people not to register? A. No, I have no such recollection. I do not remember that you said anything of that kind.

Q. How long have you known me, Mr. Abbott? A. About twenty years.

Q. In recent times, say since war was declared, have you any recollection of my discussing the issue of war? A. I have many such recollections.

Q. Have you any recollection of my discussing the question of the draft law order which was put out? A. I don't remember. We discussed, I remember, this question on many occasions.

Q. Do you remember any time in our discussion, my stating that I would tell people not to register? A. I remember very distinctly that you did not tell them not to register, because, like the last witness here, I was a little bit disappointed that you did not take a stronger and more uncompromising attitude in regard to the question.

Q. So, you were disappointed? A. I was disappointed that you did not come out more definitely and say to the people they should not register.

Q. Since you have known me so many years, Mr. Abbott, will you please tell the Court whether

you have received letters from me on a number of occasions? A. Yes, I have received a great many letters from you.

Q. Were they in my handwriting, sometimes? A. Yes, they were very frequently in your handwriting.

Q. You are a literary man, you said? A. Yes.

Q. Do you also read proofs? A. I do.

Q. You are used to reading manuscripts? A. I am.

Q. Do you find my letters very easy to read? A. I think your handwriting is rather difficult to read, especially for anyone that is not familiar with it.

Q. You also attended—I believe you did—or rather, did you attend the Hunt's Point Palace meeting? A. I did.

Q. Did you preside there? A. I did.

Q. Did you, during my address, hear me tell the people not to register? A. I certainly did not hear you tell them not to register.

Q. And you were disappointed because I did not tell them not to register? A. I did, particularly because I felt you would take a more extreme attitude than you did.

By Mr. Berkman.

Q. Did you hear Mr. Berkman speak at the Harlem River Casino? A. I did.

Q. You were chairman of the meeting? A. I was.

Q. Sitting where the chairman usually sits, and standing up to introduce people? A. That is correct.

Q. While I was not speaking do you remember seeing me on the platform? A. You are speaking of the first meeting?

Q. Harlem River Casino? A. Yes, I remember it. You were there as a speaker.

Q. In what condition was I? A. You had your crutches, and you remarked your foot was very sore. You sat near the piano at my left, and faced the audience.

Q. Did, or rather do you remember a few of my friends standing around me? A. I saw a crowd, mostly in front and around you, and a few sitting on the platform.

Q. Do you remember the purpose, why they were around me?

Mr. Content: Objected to. What has that got to do with it.

The Court: It has been stated several times that your friends were around you in order to protect you, to keep people from going on your foot.

Mr. Berkman: Yes.

Q. Did you see any soldiers come up to me, back there? A. I heard at various times during the evening that soldiers made efforts to get on the platform.

Q. And you heard me explain to the people that we will leave in plenty of time to let the soldiers on? A. Exactly so.

Q. And there were a few arguments about that? A. Possibly, certainly.

Q. You heard that soldiers sent up word, a message, asking for the floor. Was that message delivered to you? A. It was delivered to me.

Q. What was our reply to the soldiers? A. Our reply was that they could have the floor after the meeting was finished.

Q. Did you, or do you remember the meeting at Hunt's Point Palace? A. I do.

Q. June 4? A. Yes.

Q. That was the mass meeting following the mass meeting at Harlem River Casino? Were you chairman at that meeting? A. Yes, I was.

Q. As chairman, did you listen to the speeches of the speakers? A. I did.

Q. Did you hear any of the speakers talk about violence? A. I heard none of them talk about violence.

Q. Did you notice some soldiers in the gallery, in the boxes there, making some disturbance? A. I saw them throwing the bulbs on the speakers.

Q. Did you notice that happened when I was speaking? A. I did.

Q. Did you notice when I spoke direct to the soldiers? A. I notice you addressed your remarks, some of them, to the soldiers.

Q. While you were sitting and listening to my speech, did you understand that most of them, a good deal of my speech, was addressed to the soldiers? A. Certainly, I understood that and heard that.

Q. In a gentlemanly manner? A. You tried to reason with the soldiers, to prevent their assaults upon the audience and upon the speakers.

Q. My attitude to them was not one of involving violence, was it? A. It was one of conciliation and an attempt to prevent disorder at the meeting.

Q. Did I distinctly appeal to the common sense and reason and conscience of the soldiers? A. You did.

Cross-examination by Mr. Content.

Q. At the meeting on the 18th of May, did you hear Miss Goldman's speech? A. I paid very close attention, listened carefully to the whole speech.

Q. Do you recall the substance of the speech? A. I think I can recall pretty nearly everything.

Q. Did she mention the word "registration" to your recollection? A. So far as I remember——

Q. Whether she discussed the words "register" or "registration" to your recollection? A. She may

have mentioned the word "registration," but the point of the meeting was the vote against conscription.

Q. Was any vote taken upon any question by the audience? A. It was not, there was no vote taken by that audience.

Q. You attended—you did not see the stenographers at the May 18th meeting, did you? A. I did.

Q. Did you see any Federal officers there? A. I don't know whether they were Federal officers, I saw stenographers.

Q. They were not on the platform, were they? A. I think they were on the platform, no, they were——

Q. You have known me for some time, have you not? A. Yes.

Q. By sight, and to speak to? A. Yes.

Q. You didn't see me at the 18th of May meeting? A. I don't remember that I did.

Q. You did see me at the Hunt's Point meeting? A. I think I did, yes.

Q. Perhaps it may refresh your recollection if I say that I was on crutches, also? A. I don't remember seeing you distinctly at either meetings, but so far as the stenographers were concerned, I remember they were there. They were right on the platform. But I don't remember it so clearly, at the first meeting.

Q. Now, you went and introduced the various speakers at the Hunt's Point meeting, didn't you? A. I did, at both meetings.

Q. You stated in reply to one of Mr. Berkman's questions, that you were disappointed that Miss Goldman did not tell people not to register—that is, did not take a more definite stand? A. I say I was surprised.

Q. You did not use the word "disappointed"? A. I may have used the word "disappointed," but "surprised" is more accurate.

Q. You thought they were going to urge people not to register? A. I thought they were going to take a more extreme attitude than they did on this particular point.

Q. Well, on June 4, you knew that the law was a law, to the effect that people must register, of conscriptable age? A. Yes.

Q. So that it was your idea, that is to say, your expectation, that they would urge people to violate a definite provision of the law? A. I thought it was possible.

Q. Didn't you so express it, in effect, I mean? A. No, I was simply interested in knowing what attitude she would take in that case, whether they would or would not definitely tell people not to register.

Q. At that meeting the defendants were expected to present speeches, at that meeting? A. They were to present speeches.

Q. And I suppose you made a few introductory remarks, just occasionally from time to time, introducing a speaker, you would say a line or two as to who they were, is that correct? A. That is correct.

Q. On one occasion you read a written speech by a Roumanian woman, Mrs. Yuster? A. That is correct.

Q. Who was not a speaker herself? A. That is correct.

Q. You read that to the audience? A. Yes, I read that to the audience.

Q. So, this far I am correct? A. That is correct.

Q. Did you at that meeting which you attended, make these remarks: "I don't know how many young men will refuse to register and be conscripted to-morrow, but I do know that the young man who shakes off the bloody paw of militarism, when it is laid on his shoulder, who refuses to be shipped to the trenches of Europe, I do know that young

man is doing something that is of unquestionable value"—— A. Read me the passage again.

Q. If I make an error, just correct me: "I don't know how many young men will refuse to register and be conscripted to-morrow, but I do know that the young man who shakes off the bloody paw of militarism, when it is laid on his shoulder, who refuses to be shipped to the trenches of Europe, I do know that young man is doing something that is of unquestionable value, not only to himself, but to all humanity and to all posterity," and then there was applause. A. That passage is correct.

Q. I might say, for your information, that I am reading from the transcript of the stenographer employed by the No-Conscription League. A. That report is substantially correct.

Q. How about this: "The young man who out of a keen sincerity"—— A. Out of a clean.

Q. That is "keen" there. You say it is "clean"? A. Yes.

Q. (Reading) "The young man who out of a clean sincerity and idealism, refuses to take arms in a cause in which he does not believe, is stronger than any or all the governments that ever existed." A. That is correct.

Q. (Reading) "Down with militarism." Is that correct? A. Correct.

Q. (Reading) "And down with the state that cannot maintain itself except by forced service." Is that correct? A. Correct.

Q. Then, the first speaker that you introduce, I notice that you say, "The first speaker is a young man of conscriptable age." A. Correct.

Q. And this speaker, Mr. Kane, the next speaker, according to your introduction, said in regard to registration, "Any attempt to violate the laws of true democracy should be crushed by the will of the people who love democracy, and to-morrow, on June 5th, you will have your opportunity to crush

those laws that destroy democracy." A. I think he said that.

Q. Mr. Kane did? A. I think so.

Q. Did Mr. Kane further say this: "I cannot allow any law to interfere with the freedom of my conscience." A. I think he said that.

Q. Now, did you in reading Mother Yuster's speech, or rather did you state in speaking for her, "We will never allow our sons to be conscripted," or did she say that through you as a mouthpiece? A. I think she did.

Q. In introducing Mr. Berkman, did you introduce him in these words: "A man who went to prison for fourteen years in the fight for liberty." A. I certainly did say that.

Q. Now, Mr. Abbott, you have contributed from time to time to Miss Goldman's magazine, *Mother Earth?* A. I have.

Q. Did I understand you to state on your direct examination that Miss Goldman did not advocate violence at any time? A. I don't know whether the question was put to me in that form.

Q. Well, in your various speeches, with Miss Goldman, did you ever discuss this question? A. I have never known her to advocate violence.

Q. In her magazine, *Mother Earth,* the July issue, 1914, did you contribute an article entitled "Leonard D. Abbott's Speech," or rather was your speech at Union Square published? A. Yes.

Q. Now, let me ask this preliminary question: In July, 1914, to your knowledge, was Miss Emma Goldman the publisher of *Mother Earth?* A. She was.

Q. You knew that at that time? A. I did.

Q. And at that time was Mr. Alexander Berkman the editor of *Mother Earth?* A. If I remember, at the date when that particular issue was published, Emma Goldman was thousands of miles away.

Q. But she was the publisher? A. She was the publisher.

Q. And Mr. Berkman was the editor? A. Yes.

Q. Having an office at that time at 74 West 119th Street, New York City? A. Correct.

Q. Now, in that magazine, was your speech given in Union Square published? A. It was.

Q. And your speech appears on page 140—I will show it to you. A. That is all right.

Q. You gave this—have you ever read it? A. I have. That is a correct transcript of my speech.

Q. It was published in July, 1914, in *Mother Earth?* A. Yes.

Q. And at that time Miss Goldman was the publisher and Mr. Berkman the editor? A. Yes.

Q. Was Mr. Berkman here at that time? A. Mr. Berkman was here at that time.

Q. At the time in Union Square when you made your speech? A. He was.

Q. And he also made a speech on that occasion? A. Yes.

Q. And you were on the platform there together? A. We were.

Q. And some other speakers, including—I think Mr. Berkman was the first speaker? A. As I remember, it was he.

Q. And then you followed? A. Yes.

Q. And then Miss Rebecca Edelsohn? A. Yes.

Q. And in the meeting, you referred to a memorial meeting? A. Yes.

Q. And then Miss Rebecca Edelsohn spoke? A. Yes.

Q. And then Miss Elizabeth Gurley Flynn?

Mr. Berkman: The defense admits it all.

Q. According to your recollection—I am only asking for that, did Miss Elizabeth Gurley Flynn speak on the same occasion? A. She did.

Q. And a man named David Sullivan? A. He did.

Q. And a Charles Robert Plunkett? A. He did.

Q. So that on this occasion, in this issue of *Mother Earth,* everybody's speech was published? A. Yes.

Q. And in this issue of *Mother Earth* your verbatim speech was published? A. Yes.

Q. And I have shown it to you on page 140? A. Yes.

Q. Did you contribute an article to *Mother Earth,* on page 156, called, "The Fight in Tarrytown and its Tragic Outcome"? A. I did.

Q. Is it true that at this meeting a telegram from Emma Goldman was received, this meeting in Union Square? A. Yes.

Q. Was Mr. Pietro Allegra a speaker also, in the Italian language? A. He was.

Q. Louis Fraina? A. I think he was there. I don't remember him speaking.

Q. Now, in this article, I don't want to read the whole article, and the only point I want to reach is this in reference to violence—did you say this: "Whether Arthur Caron and his friends decided to resort to violence, I do not know. But if they did, are they to be blamed? Let him that is without the spirit of resistance to tyranny and outrage, cast the first stone. If Caron decided to employ violence upon his enemies, and upon the enemies of his class, he did so only after he had exhausted peaceable methods." A. I certainly might have said that.

Q. That is a correct transcript? A. Yes.

Q. That was published in *Mother Earth,* according to your recollection? A. That was a correct transcript of what I said.

Q. Now, in the same issue of *Mother Earth,* do you recall the publication of Rebecca Edelsohn's speech? A. Yes.

Q. Were you present when she delivered the speech? A. Yes.

Q. And Mr. Berkman? A. Yes.

Q. In Union Square? A. Yes.

Q. Do you recollect—I ask for your recollection—did Miss Edelsohn say this, with reference to Arthur Caron, Charles Berg and Carl Hanson, who were killed in an explosion: "But this we do know: whatever the cause of their death, whether they died at the hands of the enemy or because of the premature explosion of a bomb, they died in the interest of the working class. Therefore they are our comrades, no matter what the cause of their death." A. According to my memory, that is a correct transcript.

Q. I am only asking for your best recollection. A. Yes.

Q. You appreciate I am reading from *Mother Earth?* A. Yes.

Q. And if *Mother Earth* is wrong, I shall be glad to be corrected.

Q. How about this: "If it was a premature explosion, then it is not our comrades that we must be ashamed of; it is society at large that should be ashamed, society that forces the best men and women to forfeit their lives in order to gain a few more liberties." A. So far as I remember, that is all right.

Q. Now, in another place, on the same page, 145, "I want to say that it's about time the working class came out frankly and openly and said, 'Yes, we believe in violence; we will use violence whenever it is necessary to use it. We are not afraid of what your kept press says; and when we are murdered and cannonaded, when you train your machine guns on us, we will retaliate with dynamite.'" Is that according to your recollection? A. According to my memory she said something of that kind, yes.

Q. And then after that she says, "And I hope that the day is not distant when the working class will say, 'We are not afraid of using violence. Every hour that we work in the factory we are

kept there by violence, because we are forced to live under your rotten capitalistic system'"? A. Yes, I think she said something of that kind.

Q. And then a further remark: "But the real revolutionists are not afraid of the word violence, nor even of the word dynamite"? A. I should think she said something of that kind.

Q. And this further remark—this is the ending of her speech: "Don't be afraid of violence when the violence is on the side of the laboring class. The only thing is: Use it when you have the power, and when you have enough of it." A. I think she is quoted accurately.

Q. Now, at that meeting, was there another speaker, Charles Robert Plunkett? A. Yes.

Q. Do you know Mr. Plunkett? A. I do.

Q. Do you remember at that meeting that he said this: "I care not what position others may take; I have often from this platform and from other platforms in this city, declared that I believe in violence, and I have no reason to retract that statement now. I cannot answer for others, I can speak only for myself; as for me, I am for violence. Not only defensive violence, but offensive violence." Do you recall that? A. I do.

Q. Is that substantially according to your recollection—that is, that you are convinced of its correctness? A. Yes.

Q. And this was about three years ago? A. July, 1914.

Q. (Reading) "I am not afraid of proclaiming the probability that our comrades met their death while preparing to strike a blow of terror at the heart of the enemy." Do you recollect that? A. I do.

Mr. Berkman: The defense admits everything in *Mother Earth*.

Q. (Reading) "To oppression, to exploitation, to tyranny, to jails, clubs, guns, armies and navies,

there is but one reply: Dynamite." That is according to your recollection? A. Oh, yes. May I comment on that?

Q. Certainly. A. Plunkett and Miss Edelsohn at that time believed in violence, we believed in free speech, and it was their privilege to express what they felt and thought at that time.

Q. According to Mr. Berkman, did he believe in violence at that time? A. Mr. Berkman's speech was recorded in the same issue.

Q. Did Mr. Berkman, according to your recollection, say as follows: "It was the same speech—"

Miss Goldman: I ask the Court whether I may at this stage make a small remark?

The Court: No, you can only make an objection.

Mr. Berkman: Well, I object.

Mr. Content: On what ground?

Miss Goldman: It is this, that the charge is advising people not to register, and it seems that here we are being tried for speeches made by somebody else in 1914. The speeches are being read into the testimony, and the jurymen here hear these speeches. I am not clear myself, and don't expect anyone else to be clear, on what I am being tried for just now.

The Court: The question as to violence, so far as that is concerned, is only on the question of credibility. You are not being tried for violence, you are not being tried for any infraction of the law in that record. A man has been on the stand and has testified that he took down in stenographic notes certain expressions, and testimony has been introduced to the contrary, to the effect, briefly stated, that the defendant Emma Goldman has repeatedly stated that she is against violence. Now the Government has the right, as I said before, to bring forward

any writing on the question of credibility, which shows the contrary, if it does show it.

Now, the defendant Emma Goldman was the publisher of the paper in question, and the defendant Alexander Berkman was the editor, and he can only inquire as to what was recorded in the paper, not as to anything else. I have also explained, I think clearly, the question as to credibility, and when the matter comes, when the time comes, I will instruct the jury to the effect what I am saying now, among other things.

None of the defendants is now on trial for any act of violence, and this simply goes to the question of credibility.

Mr. Content: I would like to offer in evidence Government's Exhibit——

Miss Goldman: One moment. Would it be a test of credibility, if it was shown at this trial, for instance, that one of the defendants made a remark which could be construed as contrary to her teachings, and ideas—could it be proved that she did make it, but it is in the statement of somebody else?

The Court: You are getting into the realm of argument now. I have endeavored to state the law clearly throughout this case, and I will, of course, and it will be properly stated to the jury when the time comes.

Miss Goldman: I take exception to the ruling, and you understand that we do not object to anything being put in evidence.

The Court: In order to protect your interests, your objection should be made more formal.

Make it this way: That the defendant objects to this line of evidence as irrelevant and immaterial, and the Court overruled the objection, and to each defendant reserves an exception.

Mr. Content: May I just say this one thing now, on this testimony, that the defendants' evidence opened up first this line of testimony.

The Court: Obviously, else I would not have permitted you to go as far as you have.

Mr. Content: Now, I offer in evidence Government's Exhibit 55 for Identification, which is a bundle of *Mother Earths*, testified to as having been found in Miss Goldman's office, that is to say, *Mother Earths* of July, 1914, found on the day of the arrest, this being one of them I hold in my hand.

The Court: Very good, it will be received.

(Marked in evidence as Government's Exhibit No. 55.)

Mr. Content: I think it would relieve Mr. Abbott, if I just read Mr. Berkman's speech on that occasion. (Reading same to the jury.)

Mr. Content: I will read on page 157, the article of Alexander Berkman (reading same).

I also want to read Emma Goldman's telegram, at page 154, at that meeting at Union Square.

Q. Are you an anarchist? A. It depends on what you mean. I am, if I can define it.

Q. According to your definition? A. According to my definition, yes.

By the Court.

Q. I understood you to say in your direct examination, in answer to the questions of Miss Goldman, that at the second meeting, the one at Hunt's Point, you were surprised she had not taken a more extreme stand—I think you said that, or words to that effect.

Mr. Content: He said at both meetings.

The Court: I know that, but I am asking him as to Hunt's Point. Is my memory right on that?

A. Yes, that is correct.

Q. Now, you were at the meeting on May 9, the meeting of the No-Conscription League, when it was organized? A. I was.

Q. I gather you were not at the meeting of May 23rd, at Miss Goldman's house? A. At the private meeting?

Q. Yes. A. No.

Q. Between the date of May 9, and the date of the Hunt's Point meeting, which was June 4, had you seen the defendants? A. Why, I had probably some conversations with them, no extended conversations.

Q. You had some conversations? A. Yes, some conversations.

Q. Well, what event, if any, or what conversations, if any, had taken place which led you to expect that at the Hunt's Point meeting there would be what you have characterized as a more extreme stand on the question of registration? A. That impression was simply based upon my knowledge of her deportment and character, not upon any conversation.

Q. That is rather general—I don't quite understand what you mean by that. A. Well, I mean there was nothing that she said to me, or I said to her, which would lead me to suppose she would oppose registration, but we were in a period of intense emotional excitement, and it was a moment when a person who is extreme may be led to make extreme statements, and it was in that sense I thought perhaps she might be more extreme than she was.

Q. Now, that Hunt's Point meeting was held on the eve of registration day? A. It was.

Q. Have you any idea how large an audience was present? A. Well, the hall was full. I do not know how many people the hall holds, but it was full.

Q. Is it fair to say there were several thousands there? A. Several thousands, yes.

Q. And were they men and women of all ages? A. Yes, they were.

Q. When you looked around, did you see, or did it seem that there were some young men there of the so-called draft age, within that age? A. There were.

Q. Many of them? A. There must have been quite a few.

Q. Were there persons strangers to you, as well as persons that were known? A. There certainly were.

Q. Young men, among those, young men? A. Many young men I had never seen before.

Q. Now, at the meeting of the 18th of May, were there at that meeting many young men? A. There were.

Q. Would you say, from appearances, that they were between the ages provided for in the Draft Law? A. There must have been some young men of that age.

Q. Did you see them? A. Yes.

Q. Were there strangers to you also there? A. Many of them were strangers to me.

Q. Were you present at any time when it was determined to have the meeting on the eve of registration? A. I don't think I was present at any outside of the meeting at the *Mother Earth*, but I knew in general that the meeting was to be held, and the first plan was to hold it in Madison Square Garden.

Q. Were there any circulars given out in the meeting? A. I don't know anything about that personally, about the giving of circulars. I have no doubt some were given out.

Q. Did you see any given out? A. No, sir, I did not.

Q. I only want you to give your personal knowledge. A. I have no direct personal knowledge on that.

By Miss Goldman.

Q. Do you know this book? A. I have read it very carefully.

Q. And it represents a series of essays on— A. The principles of anarchism.

Q. From my point of view? A. Certainly.

Q. Do you recognize what this one is? A. The psychology of political life.

Miss Goldman: I would like to offer that in evidence.

The Court: Yes, it may be received.

Mr. Content: No objection.

Miss Goldman: May I also at this point bring in evidence volumes of *Mother Earth*, containing my policy, or our policy on war, liberty, etc.

The Court: Certainly. Just hand them to the clerk, and he will mark them.

Miss Goldman: This is an essay on patriotism.

The Court: I can make it very simple. I will receive the whole book in evidence, and leave it to you to read such parts thereof as you may care to do. In other words, there may be some parts of it that are quite irrelevant. But everything that is in the book that is relevant, you may read, and the book for that purpose may be taken in evidence entirely.

(Marked in evidence as Defendants' Exhibit B.)

By Mr. Content.

Q. You said certain literature was distributed at the meeting? A. I heard it was.

Q. You don't know of your own knowledge? A. No.

Q. You did not see it yourself? A. I did not.

(Whereupon the trial was adjourned to July 6, 1917, at 10 A. M.)

New York, July 6, 1917, 10 A. M.

Trial resumed pursuant to adjournment.

Present:

The Court, counsel and jury, same as before.

Mr. Berkman: We put in evidence issue No. 2, volume No. 1, of *The Blast,* January 22nd, 1915.

(Marked in evidence as Defendants' Exhibit C.)

The Court: Just a moment. I have a memorandum here. Do you want to put in the whole number, or only this article referred to?

Mr. Berkman: The articles and papers of *The Blast* on page 4, "What is the matter with labor?" Page 4.

The Court: Very good. "Aspirations of *The Blast,*" and the article entitled, "What is the matter with labor?"

Mr. Berkman: The first volume, Vol. 1, Issue 5, February 12, 1915, page 4.

(Marked in evidence as Defendants' Exhibit D.)

The Court: That is a very little one, No. 5. What are the articles?

Mr. Berkman: The page 4 articles.

The Court: The articles on page 4, entitled——

Mr. Berkman: "The Madness of Jingoism" and "Prepare, Prepare." The third article is "To Work Levels."

The first volume, issue 17, August 15, 1916, two articles, one called "Down with the Anarchists," page 5, and another one "Violence and Anarchism," page 4.

(Marked in evidence as Defendants' Exhibit E.)

The Blast, volume 2, issue 51, June 1, 1917, page 3, "Der Mutter."

Mr. Content: Your Honor, this whole article is in evidence already. I don't think it is necessary to re-operate. I did not read that story, but Mr. Berkman can read it, but it is already Government's Exhibit in Evidence.

The Court: Very well. You need not give it a separate number.

Mr. Berkman: *Mother Earth,* volume 9 and 10, if the Court please, I have several articles marked there, but we can simply mark the whole thing.

The Court: Very good.

Mr. Content: Volumes 9 and 10—I beg your pardon, volumes 8 and 9.

The Court: Yes, 8 and 9, not 10.

Miss Goldman: I am putting in 10 later.

The Court: Very well, just get it straight. Volumes 8 and 9 are offered by the defendant Berkman.

(Marked in evidence as Defendants' Exhibit F.)

Mr. Berkman: *Mother Earth,* volume 5, No. 10, December, 1910, page 309: "Definitions."

(Marked in evidence as Defendants' Exhibit G.)

LEONARD D. ABBOTT resumed the stand.

By Mr. Berkman.

Q. Mr. Leonard D. Abbott, were you present at various meetings, public and private, where I was chairman? A. I was.

Q. In years past, I mean? A. Certainly.

Q. And in recent years? A. Yes, certainly.

Q. When I am chairman, do I ever call for a vote on any question? A. I don't remember that you have.

Q. Did you ever hear me call for a vote? A. No.

Q. Do you think it would be consistent in me to call for a vote when I am chairman? A. No.

Q. At a No-Conscription League meeting, is a question ever put formally to the meeting? A. I was never present at any meeting at which the minutes of the board were put in the form of a vote.

Q. When I am chairman, was the question ever put to a vote? A. I have never been present at any meetings at which you as chairman put a formal vote.

Q. Never since you know me? A. No.

Q. How long have you known me? A. About twenty years.

Q. Have I been chairman on many occasions? A. You have.

Q. Now, Mr. Abbott, we heard yesterday about speeches made at Union Square, and mass meetings in 1914, and speeches referred to from that particular meeting. Can you tell us what was the occasion that caused us to call this meeting at Union Square—was there a strike or any other affair of that kind? A. The meeting at Union Square was the direct result of the strike of the miners in Colorado against the Rockefeller mines in Colorado, and it was also the direct result of the massacre of the working people and the burning alive of women and babies in the strikers' camp in Ludlow, Colorado.

Q. That mass meeting was not an ordinary affair, was it? A. It was a very extraordinary affair.

Q. Called under very unusual and special circumstances? A. It was called under the stress of intense indignation for what we regarded as the outrages upon the miners in Colorado.

Q. Was that indignation felt throughout the country?

Mr. Content: Objected to.
The Court: Sustained.
Mr. Berkman: Exception.

By the Court.

Q. In your answers, are you referring to the meeting at which the speeches were made to which reference was had yesterday? A.. Yes, sir, I am referring to the speeches to which reference was made yesterday.

By Mr. Berkman.

Q. That particular mass meeting was at Union Square? A. That's right.

By the Court.

Q. Now, let me interrupt you in order to make that clear. The meeting apparently was held in memoriam, or something like that, on account of three men killed, Caron, Hansom and Berg. Now, who were they? Who were those three people? A. These young men were agitators and proponents in this fight against the Rockefellers at that time.

Q. Under what circumstances did they die? A. They died in a bomb explosion in Lexington Avenue.

Q. In this city? A. In this city, yes.

Q. I mean what happened— A. Well, these young men were killed in Lexington Avenue in connec-

tion with a bomb explosion that was never entirely explained.

Q. That is presumably a dynamite bomb? A. Yes.

Q. Were they the makers of the thing? A. What happened was never known, or was never explained. The thing was always more or less of a mystery.

Q. Then there was an explosion of a dynamite bomb in Lexington Avenue? A. Yes.

Q. Did these men live there at the place? A. These men lived there at the place.

Q. The three men who were killed lived at this place in Lexington Avenue? A. They did.

Q. The same dynamite bomb which exploded, was the one by which they were all killed? A. That is correct.

Q. Was the building blown up? A. It was.

Q. Anyone else killed? A. I think one other woman was killed.

Q. And did these three men live together? A. I don't think so.

Q. Well, they were associated? A. Yes.

Q. And this meeting at which those speeches were heard or delivered— A. Was as a result of the death of these men.

Q. That was in memoriam of these men? A. That is correct.

Q. There was nobody at the mines in Colorado killed there, as far as anybody knows? A. But these men were protestants against the Rockefellers, whom they held responsible for that crime.

By Mr. Berkman.

Q. Mr. Abbott, do you remember whether the District Attorney's Department of New York City made an investigation of that affair? A. I remember they made a very lengthy investigation of the whole affair.

Q. Of that explosion? A. Of that whole explosion.

Q. Did they determine whether it was the agents of Rockefeller who caused the death of these men, or did they determine anything else in the matter? A. Well, as far as I know anything about the matter, it was left a mystery, was never clearly brought out, the facts in the matter. There were no further arrests made, no arrests, in fact, made in connection with it.

Q. Were there any arrests made in connection with these explosions? A. No.

Q. Was it not charged at this mass meeting in memoriam, of these explosions, that these men died as victims of Rockefeller? A. It was so.

Q. Were any arrests made as a result of those speeches we heard yesterday? A. There were no arrests made.

Q. Were representatives of the Police Department here, of the City Department, present at that meeting in Union Square? A. They certainly were.

Q. Were they there in force? A. They certainly were.

Q. Were there five approximately, or approximately a thousand? A. There were a great many, I can't tell how many.

Q. Was there representation from the Detective Bureau? A. There was, certainly.

Q. For the Mayor? A. Yes.

Q. Were they near the platform? A. They were.

Q. And they heard the speeches? A. Took them down.

Q. Did they arrest anyone? A. They arrested nobody.

Q. Neither on that occasion or subsequently? A. No further arrests, no arrests were made at that time.

Q. Were any arrests in connection with that meeting made at any time? A. No.

Q. Those speeches which were read here, and as they appeared in the *Mother Earth* paper, do you consider them, from your knowledge of *Mother*

Earth, and from your knowledge of speeches—that is, that the *Mother Earth* articles——

> Mr. Content: I will concede, to help Mr. Berkman out, that the speeches from which I quoted to the jury, and some of which I read to the Court and jury, contained in the May issue of *Mother Earth* are verbatim remarks of the speeches in the Union Square demonstration, July, 1914, Government's Exhibit 55, are verbatim reports of the speeches at the Union Square demonstration; but, Mr. Berkman, some of the things I read were independent articles, but those things in Government's Exhibit No. 55 which are labeled "Alexander Berkman's opening address" and "Leonard Abbott's address" I will concede that they are the verbatim remarks of the speakers at the Union Square meeting. That is correct, is it?
>
> The Witness: Correct.

Q. Do you know whether the Post Office Department held up *Mother Earth,* or confiscated, or did anything—made any complaint with regard to publishing these reports of the mass meeting? A. No, sir, the Post Office Department did not hold them up or take any action in the matter.

Q. Absolutely no action in the matter? A. No.

Q. Do you remember whether there was any agitation in the East, and in New York especially, with regard to that Colorado strike of the miners? A. Why, the whole country was full of agitation.

Q. It was a very exciting time? A. It was a crisis in the labor movement which excited intense indignation all over the country.

Q. And the mass meeting of July, 1914, in Union Square, took place after the massacre in Ludlow of the women and children? A. And was a direct result.

Q. Of the alleged massacre? A. Yes.

Q. To your knowledge it was a massacre?

Mr. Content: Objected to.

Q. Well, it is a matter of common knowledge? A. A matter of common knowledge, absolutely. Why, a monument has since been erected on that location.

Mr. Content: Objected to.

The Court: That is sustained.

Q. Mr. Abbott, do you know whether I was ever interested in educational matters? A. I know you have been interested in many educational matters.

Q. Do you know whether I ever had any connection with the Modern School of New York? A. I know you were one of the founders of the Modern School.

Q. I was one of the founders of the Modern School? A. Yes.

Q. What does that school stand for? A. Stands for the education of children along libertarian lines.

Q. Does that school stand for violence? A. It certainly does not stand for violence.

Q. Is that school fashioned after the ideals of Francisco Ferrer? A. It is.

Q. What was the attitude of Francisco Ferrer with regard to violence and education?

Mr. Content: I object to that; Francisco Ferrer is not on trial here.

Mr. Berkman: The point is this, that——

Mr. Content: Wait a moment.

Mr. Berkman: This has been borne out here; I was one of the original founders.

The Court: In view of the manner in which the point has been brought in I will allow the witness to state the principles of Ferrer briefly.

A. Well, Francisco Ferrer expressed himself definitely and specifically in regard to this question of

violence in a statement that has been circulated all over the world, and as far as I can remember the exact words they state, or rather Ferrer states, that what violence gains for us to-day another act of violence may lose for us to-morrow; only that which is laid deep in the consciousness and mind of humanity is permanent.

Q. Was that thought the foundation of the Ferrer School in this country? A. That statement appears upon the walls of the Ferrer School in this country.

Q. I mean the spirit and line of education as found here in the Ferrer School? A. Yes.

Q. Is it based upon that thought of Ferrer? A. Yes.

Q. And I was one of the original founders of that school? A. Yes.

By Juror Number Four.

Q. Do I understand that that is all based upon the laws of the United States, or within the laws of the United States? A. That it is within the laws.

Q. That in this school the pupils are taught to obey the laws of the United States and to be within the laws of the United States? A. The pupils of this school——

Mr. Berkman: Pardon me, that question is too general, it seems to me.

By Mr. Berkman.

Q. Did the Government of the City or of the Federal Government interfere with the Ferrer School?

Mr. Content: Wait a moment.

The Court: That is not the question. The question is perfectly intelligible, and Mr. Abbott is an intelligent man and can answer it.

A. The pupils of that school are certainly encouraged to use their faculty of criticism and idealism in regard to existing laws.

By Juror Number Four.

Q. But provided they are within the laws? A. They are not taught specifically to break the laws; they are encouraged to do their own thinking and their critical ideas and faculties to question and change unjust laws.

Q. Then they disregard the laws? A. There is certainly no such basis as that in the Ferrer School, they are taught to disregard the law, no.

By the Court.

Q. What he wants to know is this: Does the teaching at the Ferrer School in any manner involve disobedience of the law of this State and Government? A. No.

Q. And you say in that school they are taught to encourage criticism? A. We encourage criticism of all existing institutions in cases of what we conceive to be——

> The Court: Very good; that is a privilege of every American citizen; but do you counsel in that school the breaking of the laws of the United States?
>
> The Witness: No.

By Mr. Berkman.

Q. Can you give us a brief summary of the principles of the Ferrer School? A. The Ferrer Schools are based upon much the same principles that Ferrer taught in Spain in bringing up children to be self-reliant idealistic critics of the existing order, in the interest of a better and a more just social order—a freer, better and more just social order.

By the Court.

Q. When was that school founded? A. That school was founded after the execution of Francisco Ferrer in Spain seven years ago.

Q. He was executed about seven years ago? A. Yes.

Q. What was he executed for? A. He was executed on a charge of—let me see—the exact charge was that he was the fomenter and leader of a rebellion in Barcelona; that was the charge on which he was executed, but, according to my best knowledge and belief, on false testimony, as has been shown repeatedly in books that have been published since then by William Archer and other authors. We believe—a great many people believe—that he was executed on false testimony; and William Archer, the English translator of Ibsen, one of the leading English scholars and literary men, has published a book in which this matter is gone into in hundreds of pages, and in which all the documents in the case were offered and criticised and examined.

Q. Now, do I understand you correctly, the Ferrer School which you say Mr. Berkman founded, I think— A. (Interposing) He was one of the founders.

Q. (Continuing) Of which he was one of the founders, was established seven years ago? A. That is correct.

Q. That would make it around 1910, is that correct? A. That is correct; Ferrer was killed in 1909.

Q. And I see in this volume of July, 1914, a notation, I think, that you were at that time the head of the school? A. That is correct.

Q. It says, "The head of the Ferrer School"? A. That is correct.

Q. And I gather from that, and from what you stated to us, that you are thoroughly familiar with its principles? A. I am.

Q. Now, there was read yesterday—I think my attention was diverted—this article called "A gauge of change," is that correct?

Mr. Content: By Alexander Berkman.

The Court: Yes, page 167—was that read yesterday?

Mr. Content: Yes, I read that in its entirety.

The Court: Well, my attention was diverted and I was not quite sure.

Q. Now, in that article Mr. Berkman says, "Do you still ask me what the anarchists have accomplished in the last quarter of a century? Just this: They have taught the people that the violence is justified, aye, necessary in the defensive and offensive struggle of labor against capital." Now, is that in accordance with the Ferrer School? A. Well, that is a statement of an abstract principle; some believe under some conditions that violence is justifiable.

Q. You don't answer the question; I have read you a few simple English words. A. Well, my reply to your Honor is this: That there is nothing of that kind incorporated in the principles of the Ferrer School.

Q. Well, is that in accordance with the principles or contrary to the principles, or what, of the Ferrer School? A. I would say it was neither contrary nor in accordance with the principles of the Ferrer School. The Ferrer School has never declared itself on that particular point, as I recall.

Q. So that membership in the Ferrer School and the founding of the Ferrer School don't necessarily require a person to take the position either way, then, on that subject? A. No, no.

Q. And that is, the Ferrer School leaves each person free to do what he pleases? A. It leaves them free to form their own conclusions on this and other matters of that kind.

Q. And if a person advocated violence he would not necessarily be contrary to the principles of the Ferrer School? A. He would not be in accord nor necessarily contrary to the principles.

Q. Tell us what it is the pupils of the Ferrer School are taught—what is its principle? A. It is a school—an idealistic school—formed to promote higher social ideals—to encourage children to adopt higher social ideals.

Q. I know, but what does it mean? There are a great many standards that might be covered by the words "ideal"; that is largely the point of view of the persons who approve it. All these words you have spoken are words of broad and largely indefinable character. A. Well, we conceive this school is a school which is encouraging children to adopt social ideals that are superior to the present social ideals, and they are as clear as crystal.

Q. What are they? A. Ideals based upon the—

Q. I want you to give us something definite. A. Well, for instance, we stand in sympathy with the labor movement and its efforts to uproot the present capitalistic system and replace it by furnishing a co-operative system in which workingmen may control their own conditions, instead of being, as at the present time, exploited by the capitalists.

Q. Does that school—I am only inquiring because the other side opened it—Mr. Berkman, does that school advocate the abolition of government? A. It advocates the education of humanity to a place where they will be able to get along without government.

Q. Well, is it fair to say that it advocates the abolition of all government? A. In an ideal sense, yes.

Q. And that is what is being taught to the children that go to this school? A. The children will be encouraged to be self-reliant, so that in coming generations you may expect the people finally to get along without government.

Q. With a view that the ultimate ideal will be to wipe out all government? A. We do not teach dog-

matically any ideals in the school, but encourage the children to be critics of the existing system and to work for a system that will be freer, and finally realize a condition in which government would no longer exist, as we understand it to-day.

Q. Then, putting it briefly, the children are encouraged to form ideas looking toward the abolition of government? A. In an ideal sense, yes.

Q. And of course that includes the Government of the United States with all other governments? A. Of course.

By Mr. Berkman.

Q. Does the system of education in the Ferrer School try to develop in the children habits of self-government? A. Positively.

Q. And self-discipline? A. Positively.

Q. So that when you say in an ideal sense, you mean that the children are trained to be able to be their own rulers, so to speak, to be independent in spirit and independent in the sense in which Ralph Waldo Emerson enunciates the principle of self-reliance in his essay. And you would consider that the children trained in this manner would make the most ideal men and women? A. I think this training would tend to produce ideal human beings.

Q. Was the system of education in the Ferrer School as similar to or patterned on the free school of thought which Leo Tolstoi had in Russia? A. It was.

By the Court.

Q. Let me ask you so that we can get this point clear. On page 139 of the July, 1914, *Mother Earth*——

Mr. Content: Exhibit 55.

Q. (Continuing) Exhibit 55, under the heading "Alexander Berkman's opening address" occurs this

paragraph: "I want to go on record here to-day as saying that I prefer to believe that our comrades were not victims, in the sense of having been killed as the result of a conspiracy of the enemy. I want to go on record as saying that I hope our comrades had themselves prepared the bomb, intending to use it upon the enemy. Why do I say this? Because I believe and firmly believe that the oppression of labor in this country—the persecution of the radical elements especially—has reached a point where nothing but determined resistance will do any good. And I believe with all my heart in resistance to tyranny on every and all occasions." Is there anything in the Ferrer School, one way or the other, about preparing bombs to use on what the speaker here speaks of as the enemy? A. Positively not. But if I may call your attention to the quotation, those words are a direct quotation from Thomas Jefferson. Thomas Jefferson said, "Resistance to tyranny is obedience to God."

Q. You have no recollection that Thomas Jefferson talked about bombs, have you? A. No, I have not.

By Mr. Berkman.

Q. Is it not a fact that the very next sentence which the Court did not read explains the meaning of the preceding paragraph, and I will read it: "It was a great American who said that the tree of liberty must be watered now and then by the blood of tyrants"? A. That, I think, is also a statement of Thomas Jefferson's.

Q. That "Great American" has reference to Thomas Jefferson? A. That is correct.

Q. And when the word "Enemies" is referred to in this sentence, was that in connection with the struggle of labor and capital in Colorado? A. It was.

Q. Can that struggle logically be referred to as a war? A. A class war.

Q. Did not all the newspapers refer to the matter in Colorado as a war? A. They called it practically a civil war in Colorado at that time.

Q. And therefore this article refers to conditions of practical civil war in Colorado? A. Exactly so.

Q. Now, to go back to the system of tutoring in the Ferrer School; you are very familiar with the system of teaching that prevailed in Count Leo Tolstoi's school in Russia? A. I am.

Q. You are familiar with that school, that it is opposed to the tyranny of the Czar? A. Yes.

Q. And that it was forbidden by the Czar's government? A. Yes.

Q. Now, is it not a fact that the Ferrer School in New York was run along lines similar to Count Tolstoi's school in Russia? A. It was, and is based on Count Leo Tolstoi's school—libertarian principles of education.

By Miss Goldman.

Q. Since the Ferrer School has been taken up for discussion, I want to ask you whether or not you have any knowledge of the fact that Ferrer's innocence was proven in the Spanish Cabinet since his death?

Mr. Content: Now, I object to that; Ferrer is not on trial here.

By the Court.

Q. Of course, naturally, you were not in Spain at the time of his trial? A. No, sir, I was not.

Q. And I understood you to say before that your own personal view of the matter was that Ferrer was innocent of the crime for which he was executed? A. Exactly so.

By Miss Goldman.

Q. May we ask that Mr. Abbott explain to you? A. It is an important matter connected with court

procedure. After Ferrer was arrested and executed his property was confiscated by the government, his books—his school books and so on—were confiscated by the government. An appeal was thereupon taken by his lawyers to the government on the ground that he had been unjustly executed, and the charges against him were false, and the government recognized the truth of that statement to the extent that his property was returned to his heirs.

Q. I want to ask you, Mr. Abbott, since the question of the Modern School came up, and I am still connected with it—I don't want to have the jury misunderstand anything pertaining to it—now, Mr. Abbott, is it not a fact that the principle of the Ferrer School consists primarily in one thing—your Honor asked that, and it has not been answered—namely, to bring out all the latent qualities in the child? A. That is a correct definition.

Q. Is it not a fact that the Ferrer School, to give a definite definition, has to be differentiated from all other schools in this: That it only wants to bring out things and not knock in things? A. That is certainly correct.

Q. And is it not in that sense in harmony with all modern education the world over? A. I should say it was in harmony with the best educational thought of to-day.

Recross-examination by Mr. Content.

Q. Now, Mr. Abbott, you have spoken of the fact that practically a civil war existed in Colorado? A. Yes.

Q. That a state of belligerency existed was not recognized by the Government, was it? A. No, it was not recognized by the Government.

Q. And you also mentioned that in some of the speeches of Mr. Berkman at Union Square there were quotations from Thomas Jefferson? A. Yes, that is correct.

Q. It is your understanding, however, that Thomas Jefferson was largely responsible for the

form of government under which we live to-day? A. I understand that he is largely responsible for the form of government we have in this country at present.

Q. And he was an advocate of law and order and government? A. Why, he made a statement that the tree of liberty must be watered by the blood of tyrants and the blood of martyrs, I think he said.

Q. But you don't mean that Thomas Jefferson—you don't mean to indicate that Thomas Jefferson was a believer in no government? A. Jefferson himself was a believer in revolution, it seems to me.

Q. What is Miss Goldman's connection with the Ferrer School? A. She was one of the founders of the school.

Q. Somewhat similar to Mr. Berkman? A. Quite so.

Q. And her position in the school, was that somewhat similar to his? A. She was one of the founders of the Ferrer School.

Q. Well, answer my question. A. Her position and relation to the school was somewhat similar to Mr. Berkman's.

Q. And is it taught in the Ferrer School, if a particular law or statute is opposed to the ideas or beliefs of a great many members, are they at liberty to disregard that law? A. No such principle has been taught as that, to my knowledge, in the Ferrer School. I think a more definite statement of that would be entirely out of sympathy with the ideals of the Ferrer School.

Q. Do you mean that they teach the children to disregard the law? A. I mean our attitude toward the child would be for him to take his own position in regard to the laws.

Q. Then, according to the teachings a child might arrive, however, at a conclusion that a particular law being offensive to his ideals he could disregard it, although it was the law? A. If he was prepared

to take the consequences. That is up to the child, that he must be prepared to take the consequences of his actions.

Q. If they are prepared to take the consequences they are at liberty to feel that they may disregard the specific statutes of the United States? A. If they are prepared to act and take the consequences of their acts, if they are prepared to act according to their consciences and take the responsibilities for their acts, that would not be out of harmony with the teachings of the Ferrer School.

Q. Now, as a matter of fact, the actual charge on which Ferrer was convicted was technically high treason? A. He was convicted as the leader of a general strike in Barcelona.

Q. What was the technical charge? A. The charge against Ferrer was that he was the head and chief of a general strike that was called at Barcelona, Spain, as an anti-militaristic protest against war with Spain and Morocco in 1909—a general strike arising out of a militaristic protest of workingmen against war with Morocco in 1909.

By Mr. Content.

Q. Wasn't he indicted for treason? A. He was not indicted for treason; he was indicted as the head and chief of the general strike.

By Mr. Berkman.

Q. Is it not an historical act that the Supreme Court of Spain reversed the decision against Ferrer originally passed? A. Reversed the decision, and, as I have said, returned to him his property on the ground that this charge had not been proven.

Q. And is it not a fact that William Archer, the greatest critic and literary man of England, was sent by *McClure's* to Spain to investigate the whole situation, and that he declared the whole thing to have been a conspiracy to kill Ferrer? A. Two

articles on Ferrer, in *McClure's Magazine,* by William Archer, show that Ferrer was killed on false evidence.

ANNA BARON, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Miss Goldman.

Q. Have you known me for some time? A. I have.

Q. Have you worked in the office of *Mother Earth*? A. I have.

Q. Did you say in what capacity? A. Stenographer and secretary of *Mother Earth.*

Q. How long have you been employed in *Mother Earth*? A. About five years.

Q. During that length of time did you have an opportunity to copy my manuscript—different manuscripts? A. All the time—most of the time.

Q. Did you also, when I was on tour, receive many letters in my handwriting? A. Almost every day.

Q. Did you not or did you copy the manuscript for the book known as the Social Significance of the Modern Drama? A. I copied all of that manuscript.

Q. And when you received letters written while I was on tour, can you state how they were dated? A. Most of them, they were dated on the road—on the train.

Q. Written on the train? A. Written on the train.

Q. Now, having worked with me nearly five years, having received letters in pencil and written with pen, and also the mauscript you have copied, you are pretty familiar with my handwriting, are you not? A. I am.

Q. Will you please tell the Court whether you found it easy to read my handwriting? A. I always found great difficulty in reading your handwriting, and even after working five years I still find difficulty in reading your letters and manuscript.

Q. Then you can say that if a manuscript written in quiet and comfort is difficult to decipher, letters written on the train would not be very easy to decipher? A. Positively.

By Mr. Berkman.

Q. Those copies were sent to the printer, weren't they? A. They were. Miss Goldman's handwriting could never be made out by the printer, so everything had to be typewritten that Miss Goldman wrote.

Mr. Content: No questions.

Mr. Berkman: I would like to read in evidence here *The Blast*, Volume 1, No. 17, August 15, 1916.

Mr. Content: That is Defendants' Exhibit E.

Mr. Berkman: I shall read the most important excerpts, so as not to bore the jury; it is rather a lengthy article. The article is called "Down with the Anarchists" and appears in *The Blast* of last year at San Francisco (reading same).

In the same exhibit another article on "Violence and Anarchism" by Alexander Berkman, written a year ago, before we had any idea of this trial, and therefore not written for this purpose (reading same).

JACOB ABRAMS, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Mr. Berkman.

Q. Mr. Abrams, what is your business? A. I am an organizer of the International Brotherhood of Bookbinders, Local Trade.

Q. Have you known me long? A. For the last year.

Q. Well, I don't know whether you knew I lived in California when I lived there? A. Yes, I knew when you came from California to the United Hebrew Trades.

Q. Where did you first meet me in New York? A. At the United Hebrew Trades, 175 East Broadway.

Q. At a meeting of that association? A. Yes.

Q. And that was the first time I ever met you? A. Yes, exactly.

Q. Now, on what subject did I speak? A. On labor unions in San Francisco.

Q. Did I speak of the labor unions in California, and especially San Francisco? A. Yes.

Q. Did I ask the United Hebrew Trades, as delegates of various labor organizations, to give us their co-operation? A. Yes.

Q. Did I talk to them about violence? A. Oh, no.

Q. Did I speak to them about the solidarity of labor and co-operation? A. Exactly.

Q. About the improving of labor conditions? A. Exactly.

Q. Did the United Hebrew Trades vote or pass some resolution after I spoke to them? A. Yes, they decided to authorize the members to call a conference of the different unions, to send their delegates, and raise enough publicity and money for the defense in San Francisco.

Q. Do you know whether that was a unanimous decision, that they decided to raise that support? A. It was a unanimous decision.

Q. Were you at the Harlem River Casino meeting of May 18? A. Yes.

Q. Were you anywhere near the platform? A. I was on the platform.

Q. Could you hear the speeches distinctly? A. Exactly.

Q. Where was I sitting on the platform before I spoke? A. You were sitting at the left side, fronting the public—at the left side.

Q. Do you know whether there were any people around me? A. Yes.

Q. Did you see a bugler come up to speak to me? A. No.

Q. No soldier? A. No, no soldiers were allowed on the stage. I was on the committee then.

Q. Was the stage door guarded against strangers entering? A. Exactly.

Q. Did you hear Miss Goldman speak on that occasion? A. Yes.

Q. Did Miss Goldman say, "We believe in violence and we will use violence"? A. Nothing of that kind.

Q. You are positive she did not say that? A. Absolutely.

Q. Did she say anything that could be construed as that? A. No, none.

Q. Did you hear Alexander Berkman? A. Yes, I did.

Q. Did you hear him say anything about violence? A. No.

Q. Did you hear any of the other speakers say anything about violence? A. Nothing of that sort.

Q. Did you hear Miss Goldman tell the people not to register? A. No, I did not hear about registration.

Q. Did you hear Alexander Berkman tell the people not to register? A. No, I did not hear that.

Q. Did you notice some commotion during that meeting? A. Yes.

Q. I want to ask you, do you remember whether there was quite a number of speakers scheduled to speak at that meeting? A. Yes.

Q. Did all of them speak? A. No.

Q. Why? A. On account of the disturbance of the soldiers; they kept up a disturbance, and Miss Emma Goldman appealed to the soldiers not to have a disturbance. Then I remember she told the soldiers that regular soldiers were expected to have intelligence enough not to have any disturbance.

Q. The meeting, to your knowledge, was closed before the regular time? A. Exactly.

Q. All the speeches were not put on? A. No.

Q. Did you hear Miss Goldman or myself—or rather did you hear Mr. Berkman address an appeal to the soldiers to please behave themselves? A. Yes, exactly.

Q. Were you in New York about four or five years ago? A. Yes.

Q. Do you remember whether in those years there was an organization here called the Anti-Militaristic League? A. Yes, I do, that was in the time of the Mexican affair.

Q. Do you remember who was secretary of that organization? A. I don't remember exactly the secretary.

Q. Do you remember whether that organization called a mass meeting at Union Square? A. Yes, that was in the summer time.

Q. In 1914? A. Yes, in the summer time.

Q. Do you remember whether I was a speaker? A. Yes, you were.

Q. One of the speakers? A. Yes.

Q. And that was in 1914? A. Yes.

Q. You heard me at that time agitate against war? A. Yes, I knew who you were from hearing you talking and mentioning your name, Alexander Berkman.

Q. Did you know that the principles of the Anti-Militaristic League in 1914 were opposed to war? A. Yes, it was opposed to war.

Q. Opposed to all war or some war? A. To all war.

Q. And you knew I was one of the speakers at that mass meeting in 1914? A. Yes.

Q. If you therefore should hear I was opposed to fighting you would not be very much surprised? A. Oh, no.

Q. Were you present at the conference meetings of the defendants and the No-Conscription League on May 23rd? A. Yes, I was there.

Q. Were you at Miss Goldman's apartments on that meeting? A. Yes, 139th Street.

Q. Do you know whether that was not originally called for the office? A. Of *Mother Earth*.

Q. Did you go to the *Mother Earth* office? A. Yes, I went.

Q. And were you asked to go somewhere else? A. Yes, it was telephoned you could not come there on account of your injury, and we should go over there, and so we went there.

Q. Do you remember whether it was mentioned that I called up? A. Yes, I was called downstairs and heard you call.

Q. The meeting was originally for the *Mother Earth* office? A. Yes.

Q. And word was sent it would have to take place at Miss Goldman's apartments because I could not walk? A. Exactly.

Q. Did you go to her apartment on that occasion —no, that was the first time—I mean did you go there? A. Yes.

Q. At the *Mother Earth* office you were informed to go to Miss Goldman's? A. Yes.

The Court: He said that two or three times.

Q. Was Mr. Berkman there? A. Yes.

Q. Miss Goldman? A. No.

Q. Was it explained why she was absent? A. Yes, that Miss Fitzgerald——

Q. Just yes or no. A. Miss Goldman was not there.

By the Court.

Q. Was Miss Goldman's absence explained? A. Yes, it was.

By Mr. Berkman.

Q. How was it explained? A. Miss Fitzgerald read a statement, or a letter.

Q. Was it stated where Miss Goldman was? A. Yes, it was.

Q. What was said about that? A. Yes, it was this way: she read a letter from Miss Goldman; Miss Goldman went away to Springfield—I think to some lecture, I don't know exactly—and then she received the letter that Miss Goldman regrets her absence, but she——

Q. Was the statement read from Miss Goldman? A. Yes, that was in the statement from Miss Goldman, from Springfield, Massachusetts.

Q. So far as you remember the gist of the statement, did Miss Goldman take the position——

The Court: No, don't lead. Just say, "State the substance of the statement."

Q. State the substance of the statement. A. The statement from Miss Emma Goldman said that she —in her letter that she regrets her absence, but that she knew this meeting is arranged for the purpose of calling a Mothers' Mass Meeting in Madison Square, and that in the meantime she directs, no matter who is chairman there, to talk about conscription, but the No-Conscription League shall not discuss anything on registration, and we shall not try to agitate for or against registration, and that

it will be absolute; but she expects of every member of the League that he shall act that way, as she believes in the absolute individual liberty, and we shall not urge anybody to do or not to do.

Q. Did you understand her statement to be an expression of her own position or— A. Of her own position.

Q. Was it decided— A. Was discussed by the members there.

Q. I mean so far as we all were concerned, did she take a decided position? A. She took a decided position.

Q. And when the letter was read, was there a discussion afterwards? A. Yes, there was discussion there.

Q. Now, at that meeting, after the statement was read and discussed, was an official vote taken? A. No.

Q. You have attended many labor meetings? A. Yes.

Q. You know no votes were taken, minutes like regular memoranda kept, when I presided? A. I did not follow that.

Q. At any time where I have been chairman would the proceedings be kept in this official manner? A. No, not at all.

Q. Would the question be put to a vote officially? A. No, never had been.

Q. It was instead an expression—it would be the consensus of opinion? A. Yes.

Q. When they considered a position? A. Yes.

Q. What was the final decision as to registration? A. The final decision, as far as I understood—well, there was about twenty-five people, and everybody expressed his opinion, you yours, and everybody, and they had this view that we should not urge people to register nor not to register, and in fact I am of conscriptable age and I registered.

Q. You are a member? A. I am a member of the No-Conscription League and I registered.

Cross-examination by Mr. Content.

Q. Were you in court yesterday? A. Yes.

Q. All day? A. Yes.

Q. Now, at this meeting of May 18th, at the Harlem River Casino, did Miss Goldman make any mention of registration in her speech? A. Not so far as I remember.

Q. Your best recollection is the word "register" or "registration" was not used? A. I don't remember it.

Q. That is your best recollection? A. I don't remember if she mentioned that word "register" or not to register.

Q. Well, that was an important point, wasn't it? A. Yes, but I don't remember exactly.

Q. But you do remember exactly—you do remember distinctly the exact words she used to the regular soldiers? A. Yes, because that attracted my mind, when they started a big disturbance.

Q. But you don't remember whether or not she mentioned the word "registration"? A. No.

The Court: The word "registration" or "register."

A. I really don't remember.

Q. In this letter that Miss Fitzgerald read, how many sheets of paper, do you recollect, was that? A. I think it was one sheet, and on the other side, or a sheet and a half; I don't remember exactly.

Q. Was it typewritten? A. I should say it was typewritten—I don't remember. I did not pay much attention, because it was announced anyhow.

Q. In this letter did she say to the No-Conscription League they should not discuss registration; was that the statement she said? A. No, they discussed, and had come to the decision——

Q. I asked whether in the statement of Miss Goldman she said registration should not be discussed?

A. The statement was we were not to advise people to register or not to register.

Q. Before you said Miss Goldman said she did not oppose registration? A. No, she said we should discuss the matter, but should not urge people to register or not to register.

Q. Either one way or the other, either register or not to? A. No, not to urge people not to, that is her position.

Q. Were you subpoenaed to appear in this case? A. Yes.

Q. Have you the subpoena with you—how was it served upon you? A. (Producing paper) Well, I heard about this case, and I went up to Mr. Weinberger, I went up, as being at the meetings and knowing.

Q. You did not tell anybody what you proposed to testify to? A. No.

Q. Did you discuss this with anyone? A. No.

Q. So that when you went on the stand this morning you didn't know whether you were to be asked about this speech of Miss Goldman which she gave at the meeting on May 18th? A. Not at all.

Q. You had no idea? A. None at all.

Q. So that your evidence now is that before you went on the stand you never told anybody about what you were going to testify to? A. Absolutely.

Q. I ask you, did you ever tell Mr. Berkman or Miss Goldman, the defendants, that you had not heard them in the May 18th speech say "we believe in violence and we will use violence"? A. I did not speak to them about it.

Q. Not at all? A. Not at all.

Q. You were a speaker at the meeting in Forward Hall? A. Yes.

Q. You spoke in the Yiddish language? A. I did.

Q. Were Miss Goldman and Alexander Berkman speakers at the same meeting? A. Yes.

Q. You were there and heard their speech? A. Yes, I did.

Q. At that time did you hear Miss Goldman use these words: "You say it is a law? I defy your law"? A. Well, I went out right after the speech—when Miss Goldman started to speak—on account of taking collections during the meeting, and I did not hear that.

The Court: Did you hear her speak?

The Witness: When she started I took the money to go to Forward Hall, to put the money in the safe.

Miss Goldman: We admit anything in the stenographic notes.

Q. Didn't you hear either Mr. Berkman or Miss Goldman speak? A. Yes, I heard Mr. Berkman.

Q. I put the question to you first as to Miss Goldman. A. Yes, I heard Miss Goldman, but not the whole speech. You did not ask if I heard the whole speech.

Q. Which part of her speech did you hear? A. When she started I went out with the money—I went to put the money away; I walked out, and the policeman would not allow me to come in.

Q. Did you hear any of Miss Goldman's speech? A. No.

Mr. Content: Will you allow me at this point—I would like to examine a witness on this. I would like to offer some testimony to show Miss Goldman at a previous meeting announced this meeting being held, and asked the people to come to it.

The Court: Yes, you have the right to lay your foundation.

Mr. Content: May I do that at this time?

The Court: Yes.

GEORGE D. BARNITZ, recalled.

Direct examination by Mr. Content.

Q. You have been called before in this case? A. I have.

Q. Were you present at the meeting held at the Royal Lyceum on West 114th Street on June 11, 1915? A. I was.

Q. Was Miss Goldman a speaker at that meeting? A. She was.

Q. Was I present at that meeting? A. You were.

Q. Do you recall at the close of her speech, when she announced or whether she announced a subsequent meeting? A. She did.

Q. What did Miss Goldman say at the close of her speech, in substance? A. She said there was another meeting at Forward Hall on the following Thursday, June 14, at 175—if I have the correct number—East Broadway, at 8 P. M., and she invited everybody to be present.

Q. Did she use these words, "On Thursday, June 14, there is going to be a meeting at Forward Hall, 175 East Broadway"? A. She did.

Mr. Berkman: The defense admits that anyway.

Q. Did she use these words, "We invite the soldiers, the police and all"? A. She did.

The Court: Do you want to cross-examine?

Miss Goldman: No, I have nothing to say.

Mr. Berkman: We admit all that.

Mr. Content: Now, I think I have laid the foundation. Miss Goldman invited people to this meeting, and that she was a speaker and Mr. Berkman was a speaker.

Mr. Berkman: That is admitted.

JACOB ABRAMS resumed the stand.

By Mr. Content.

Q. Was Mr. Berkman chairman of this meeting?

Mr. Berkman: Yes, sure.

A. He was.

The Court: The testimony is that the chairman of the meeting was the defendant Berkman, and that the defendant Emma Goldman announced the meeting, and under those circumstances the statements made by other speakers at the meeting are admissible. The weight and relation of the statements are matters for the jury to determine.

Q. Did you, in the course of your speech, in the Yiddish language, make the remark, "I will not allow myself to be conscripted under any circumstances"? A. I never said that.

Q. You never said anything like that? A. Absolutely; I did not speak about conscription.

Q. Never mentioned conscription? A. I did not speak about conscription or registration, not at all.

Q. You did not speak about that—what did you speak about? A. I spoke on the labor question.

Q. Only on the labor question? A. I spoke on the labor question only.

By Mr. Berkman.

Q. When you were invited by myself to speak at that meeting at Forward Hall do you remember whether or not I said to you I wanted you to represent the labor element? A. Exactly.

Q. Do you know whether I had another representative of the labor element there? A. Another? I don't remember.

Q. Whether one was invited—do you know Morris Cole was invited? A. Yes, of the amalgamated clothing workers.

Q. Do you know what is the full name? A. The Amalgamated Clothing Workers of New York, which consists of sixty thousand members.

Q. Is he the secretary and treasurer? A. He is the secretary for New York of the Amalgamated Clothiers.

Q. You and he were representing the labor element. Did you see on the platform, also, Mr. Vanstone? A. Mr. Vanstone of the United Hebrew Trades, yes.

Q. Who is he? A. He is the secretary of the United Hebrew Trades.

Q. The assistant secretary? A. Yes, assistant secretary.

Miss Goldman: Now, may I put in evidence (examining papers and submitting same to the Court)?

The Court: Just read it to the stenographer.

Miss Goldman: Yes, I will. Volume, Exhibit B, I want to read certain pages under the title "Anarchism"; I don't know the number of the page, I am sorry to say, pages 85, 86, 89, 92, 93, 113, and the beginning of the second paragraph on page 114. Then a part of the same Exhibit B, pages 169, 170 and 171, "The Modern Sequel of the San Francisco Fire."

Page 2, second and third paragraphs, pages 4, 5, 6 and 7, beginning with the first paragraph on page 8 and 9.

(Marked in evidence as Defendants' Exhibit H.)

The Court: Now, the next on your list here is *Mother Earth*, Volume 12, No. 1, page 34, an editorial.

(Marked in evidence as Defendants' Exhibit I.)

Miss Goldman: Also the same exhibit, Volume 12, No. 1, an article entitled "Promoters of War Mania," page 5 of Exhibit I.

Also Volume 10, No. 1, September, 1915, pages 248 and 249.

(Marked in evidence as Defendants' Exhibit J.)

Mother Earth, Volume 4, No. 5, page 137: "A New Declaration of Independence."

The Court: What year is that?

Miss Goldman: That is July, 1909.

The Court: What is that number?

(Marked in evidence as Defendants' Exhibit K.)

Miss Goldman: You have this exhibit in evidence, Volume 12, No. 2, *Mother Earth*, page 34.

The Court: Yes, I noticed that before, Volume 12 is marked at page 34 and is considered in evidence.

VICTORIA LEVENSON, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Miss Goldman.

Q. Miss Levenson, have you on a number of occasions done substitute work for me as a stenographer? A. Yes.

Q. You have typewritten some of my articles? A. Well, I remember one article I did, or two.

Q. You mean you copied one or two? A. Yes, copied.

Q. And also you have on different occasions taken dictation work on the machine, have you not? A. Yes.

Q. And also stenographically? A. Yes.

Q. But I mean copying articles, you have done so for me? A. Yes, once.

Q. How did you find my handwriting, easy? A. Oh, no, I could not; I would struggle very hard with it; you had to be at my hand, and then you would take it right over and read it, and then you would dictate it straight on the typewriter. Your actual writing—handwriting—I could not go along with it.

Q. Is it true, or is it not true, that you left out some words in the typewritten copy? A. Quite a good deal that I could not decipher and did not want to bother with.

The Court: Any questions?

Mr. Content: No.

Examination by Mr. Berkman.

Q. One question. Have you ever known Miss Goldman's manuscript written by hand to be sent to the printer? A. No, I don't remember that.

Q. Was it the custom of the office always to typewrite anything written by Miss Goldman? A. Yes, sir.

PAULINE TURKEL, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Mr. Berkman.

Q. What is your occupation? A. I am a stenographer and typewriter.

Q. Do you work for somebody now? A. I am.

Q. Did you at any time work in the *Mother Earth* office? A. I did.

Q. When was that? A. Between the months of January and May, 1917.

Q. Are you working in the *Mother Earth* office now? A. No.

Q. When did you leave the position? A. In the middle of May.

Q. What was the reason you left? A. I went to visit some friends in Albany.

Q. Albany, New York? A. Yes.

Q. While you were working in the *Mother Earth* office did you act as stenographer and typewriter for Miss Goldman? A. I did.

Q. Also bookkeeper? A. Yes, sir, bookkeeper.

Q. Did Miss Goldman write letters when she happened to be home in the office? A. She wrote a number of letters.

Q. Give you directions about the business? A. She did.

Q. Did you ever receive letters from Miss Goldman in her own handwriting? A. I did receive two while she was on the road.

Q. Did you find it easy to read her handwriting? A. Very difficult.

Q. Did you ever receive manuscripts from Miss Goldman for the printer? A. Yes, I did.

Q. Did you receive them in her own handwriting; when you did, did you send them to the printer? A. I did not, I typewrote them.

Q. Were there specific instructions in the office that anything Miss Goldman wrote should not be sent to the printer until it was typewritten? A. Well, we did not attempt that.

Q. What was the reason? A. Because it was so difficult to decipher her writing.

Q. Were you at the mass meeting at the Harlem River Casino on May 18? A. I was.

Q. Were you close enough to the speakers to hear them? A. I was.

Q. Hear them distinctly? A. Very.

Q. Did you hear Miss Goldman's? A. I did.

Q. Did you hear her whole speech? A. Yes, every word.

Q. Did she at any time say, "We believe in violence and we will use it"? A. I don't remember hearing any such remark.

Q. If she had used such an expression, would that have attracted your attention? A. I am sure it would.

Q. Did she tell people, advise or urge people not to register at that meeting? A. She did not.

Q. Did you hear Mr. Berkman tell or advise or urge any people not to register at that meeting? A. I heard nothing of the kind.

Q. You heard nothing like that, or in the other speeches? A. Not according to my memory.

Q. Did I speak about conscientious objectors? A. Yes, you did.

Q. Did I mention that it is up to the conscience and judgment of every person to do as he thinks best in the matter? A. You did.

Q. Were you present at the meeting of May 23rd, at Miss Goldman's apartment? A. I was not.

Cross-examination by Mr. Content.

Q. At the meeting of May 18th, do you remember what was said at that meeting? A. Certainly.

Q. What do you remember? A. Well, I remember Miss Goldman saying that the American people ought to be glad that at least they have a few people in Congress who are true to their conviction.

Q. Did she mention the names of any Congressmen? A. I remember only two, that was LaFollette and Stone.

Q. Was the word "registration" or "register" used at all according to your recollection? A. I am not positive.

Q. What is your recollection? A. Why, I think Miss Goldman said there would be a good many people who will not register.

Q. She did say that? A. Yes.

Q. Did you hear anything about supporting those who refused to be conscripted? A. I don't remember exactly.

Q. Well, that is rather important, isn't it? Wouldn't that impress itself upon your mind if she had said it? A. I think it would.

Q. Now, what is your best recollection as to whether or not she said, "We will support with all the means at our support, those who refuse to be conscripted"? A. I am not sure, and therefore I would not say she said it one way or the other.

Q. It would have impressed itself upon your mind if she had said it? A. I think it would.

Q. Was any pledge made by the people not to register that night? A. There was not.

By Mr. Berkman.

Q. Was there any collection taken at that meeting? A. Yes, there was.

Q. And do you remember who called for the collection? A. Miss Goldman.

Q. When she called for the collection, did she ask the people to donate as liberally as they could for the work of no-conscription? A. She did.

Q. What do you understand the word "pledge" to mean——

VICTORIA LEVENSON recalled.

Direct examination by Miss Goldman.

Q. Were you at the meeting which has taken place in my apartment on the 23rd of May? A. Yes, I was there.

Q. Was I present? A. No, you were not.

Q. Have you any idea why I was not present? A. Yes, you were away on a lecture, I think in Springfield, I don't know just where, I think it was Springfield.

Q. You think it was Springfield? A. I think so, I don't know just where, but I know you were away on a lecture.

Q. Did you hear my message read? A. Yes, there was a message by you.

Q. Which I sent? A. Yes.

Q. Did that message give the definite position, or statement, or rather the definite position of the writer, Miss Goldman? A. As regards what?

Q. Well, as regarding registration. A. No.

Q. I mean, did the message explain my position? A. Yes, in this way, I remember a few words, I will interpret it in my own way. You said, you told them in the message that it was a very serious matter, this registration, and that you could not take it upon yourself to tell them what to do, because it was against your conscience, that they were supposed to decide it for themselves.

JACOB J. LIND, a witness called on behalf of the defendants, affirmed on his oath, as follows:

Direct examination by Mr. Berkman.

Q. Where do you live? A. 178 Nostrand Avenue, Brooklyn.

Q. What is your profession? A. High School teacher.

Q. What school do you teach? A. Morris High School, Bronx.

Q. What subjects do you teach? A. I teach Latin.

Q. Are you a graduate of some university? A. Columbia College.

Q. Were you at the Harlem River Casino meeting on May 18, 1917? A. I was.

Q. Did you have any special purpose in going there? A. Sort of educational, I wanted to see the stand, hear the stand of the people who were opposed to conscription, because I always was opposed to conscription.

Q. Are you a conscientious objector? A. I am.

Q. Do you object to war for reasons of conscience? A. Absolutely.

Q. And you came to the Harlem Casino meeting to hear what steps would be taken with regard to registration and conscription? A. Well, I had my own stand, but I just wanted to see the stand of other people who had the same opinions, to get the general point of view.

Q. Did you hear Miss Goldman speak at that meeting? A. I did.

Q. Did you hear Mr. Berkman speak at that meeting? A. I did not.

Q. You did not hear me? A. I did not.

Q. You left before I spoke? A. I left just after the conclusion, after Miss Goldman's speech.

Q. Had you ever heard her speak before that? A. I never did.

Q. Have you known me a long time? A. Not at all—well, about a month.

Q. Just about a month you have known me? A. Yes.

Q. Have we had many conversations? A. None to speak of, worth speaking of.

Q. We hardly know each other? A. Quite right.

Q. Did you hear what Miss Goldman said distinctly? A. Quite distinctly.

Q. Were you close enough to the platform to hear everything? A. I think I was.

Q. Did you hear Miss Goldman say, "We believe in violence, and we will use violence"? A. I did not.

Q. You are positive? A. Quite.

Q. If you had heard that remark, or a similar remark, it would have been such as to call your attention to it strongly? A. I think it would, especially because I always felt the word "anarchist" was misunderstood by laymen; they always believe "anarchists" means lawless, whereas scientifically it means without law. There seems to be a slight distinction, but very pronounced.

Q. Did you hear Miss Goldman say anything which could be interpreted or that could have sounded like, "We believe in violence and we will use violence"? A. Absolutely not. The general impression I got was that she was against anything of that sort. That was just a general memory of whatever she said. I could not have construed anything whatsoever in the entire speech as favoring violence.

Q. And you, as a teacher, interested in educational matters, you are able to understand language? A. I think I am.

Q. And if she had said anything about violence, or something favoring it, you certainly would have understood it? A. Yes.

Q. Are you an anarchist? A. I am not.

Q. Are you in sympathy with the ideas of anarchism? A. Well, I think they are an ideal kind of philosophy that will bring the millenium if it came. Therefore I am in sympathy in that way; also I believe everybody ought to have a right to say what they think and we should always be open-minded because we can never tell what is the right and what is not the right. The only way to discover that is to listen to people think about it, and form your own judgment. We must be sympathetic with everybody and in that way I am sympathetic to anarchists.

Cross-examination by Mr. Content.

Q. Mr. Lind, at this meeting, did Miss Goldman say anything about conscription? A. I think she did.

Q. Was there anything of this sort said, "We will resist conscription by all the means in our power"? A. I think so.

Q. Did she say, "We will support with all the means at our support, with money and publicity, all those who refuse to be conscripted"? A. Well,

I remember the money and the publicity. I am not sure about the other words.

Q. You remember "money" and "publicity"? A. Yes.

Q. (Quoting) "We will support with money and publicity those who refuse to be conscripted"—she said that? A. I believe so.

Q. You say that you were a conscientious objector yourself? A. Quite right.

Q. Are you a member of any well recognized religious sect, opposed to war? A. I am not.

Q. You said to a certain extent you were in sympathy with anarchistic principles? A. I explained that by giving you my general stand. We should be open-minded to all new philosophies and new theories. In that sense I am in sympathy.

By the Court.

Q. Was anything said that night by Miss Goldman about registering, was the word registration used, or the word register? A. To my best recollection, yes.

Q. You think there was something said? A. Yes, I think so.

Q. Now, let me ask you something: Do you remember something of this sort was said—did you hear whether this was said, exactly, or in substance, "How many people are going to refuse to conscript, and I say there are enough"? A. I am not absolutely sure it was said that way, but I would go towards that direction and say I would favor myself believing it was said there.

Q. "I would count at least fifty thousand, and there are enough to be more"? A. I don't remember that.

Q. "And they are not going to when only they are conscripted"? A. I don't remember that.

Q. "They will not register"? A. I don't remember that.

Q. Do you say that was not said, or just that you don't remember? A. I don't remember.

Q. You don't say it was not said? A. I don't say it was not.

Q. "We are going to support, with all the means at our support, with money and publicity—we are going to support all the men who refuse to register, and who will refuse to fight"? What about that? A. The one I remember is aid with money and publicity. I am clear about that.

Q. You are clear that phrase was used? A. Yes.

Q. Was anything said about refusing or supporting the men who will refuse to register? A. I don't know whether a distinction was made there between refuse to register and refuse to be conscripted. The general idea I had, was that the conscientious objectors would be aided by this society publicly and with money for legal defense.

Q. For what? A. For being here as conscientious objectors.

Q. What I am asking you is do you remember, according to your recollection, that you heard that or not? You are sure that what I just read was not stated by Miss Goldman? A. I can't remember the exact words, but the purport of what I have given you, was given.

Q. Then do you say that the words, "The men who will refuse to register and who will refuse to fight," were not used? A. I don't remember that.

Q. Will you say they were not used? A. I say I don't remember that they were not used.

Q. You don't remember that they were not used? A. No, sir.

Q. So that you would not say that they were used? A. Yes, they might have been used.

Q. Did you hear the word registration? A. Yes, sir.

Q. About how many times, in the course of her speech? A. About two or three.

Q. About two or three times? A. Yes, sir.

Q. Have you any recollection of what was said about registration? A. The thing I carried away was this, that she said she would not advise people not to register, not because she was afraid, but because she believed it was a matter of personal conscience, and in such a matter each one should decide for himself.

Q. Did she say that about conscription? A. The general thing the speakers were discussing was registration.

Q. Is it your testimony that she affirmatively said that she would not advise people not to register? A. Absolutely.

Q. You are clear about that? A. Yes.

Q. Can you give me the words? A. I have given you the words, that she said she would not advise people not to register, not because she was afraid, but because she believed it was a matter of personal conscience, and in such a matter each one should decide for himself.

Q. She said in substance the words you have just stated? A. Yes, I think I am pretty accurate, the wording is pretty accurate.

Q. And it was this connection in which she used the word register? A. That is the connection in which I remember it most.

(Recess until 2 P. M.)

AFTERNOON SESSION.

2 o'clock P. M.

Mr. Berkman: I want to state to the Court, as to the statement as to which there was so much dispute, the statement of Miss Goldman, which was sent down from Springfield, that it has just been found among the effects of this defendant—and may we consult a moment?

The Court: Certainly.

Mr. Content: I am acquitted of the charge of larceny.

Mr. Berkman: May we now put this statement in evidence—may I read it?

The Court: Well, just let Miss Fitzgerald take the stand, and identify that as the statement.

MARY ELEANOR FITZGERALD recalled by the defendants.

Direct examination by Mr. Berkman.

that is the typewritten statement to which you referred? A. It is.

Q. And that is the copy that you made of the letter received by, or statement received by you from Miss Goldman from Springfield? A. Yes, that is the copy of the statement I made from her statement.

Mr. Berkman: The defense offers it in evidence.

The Court: It is received.

(Marked in evidence as Defendants' Exhibit L.)

By Mr. Content.

Q. That is the statement that you saw Mr. McGee take from the desk? A. That is the copy of the statement I mentioned yesterday.

Q. That is the copy of the statement that you read to the meeting? A. Yes.

The Court: Well, that is the other paper.

Q. That is the paper you read to the meeting (indicating)? A. Yes, that is the paper I read to the meeting.

Q. Did you only make one copy? A. I usually make carbon copies, but I (examining paper), I think this is a carbon of the original.

Q. I beg your pardon? A. I usually make carbons, carbon copies of those. I think this is the carbon.

Q. Well, I mean to say that if any statement was read at all at this meeting. it was precisely in these words? A. Yes.

Q. That was the only statement that was read? A. Yes, that was Miss Goldman's statement which was read there.

Q. Which you copied off, and which you read? A. Yes.

Q. And you read it just exactly as it appears there? A. Yes.

Q. Did you read it in its entirety—there seems to be some confusion as to whether you read it all—I mean to the assembled guests? A. As I remember, I read the whole thing.

Q. I rather imagine or thought some witness said that he thought that you only read part of it. A. (No answer.)

(Marked Government's Exhibit 60 for Identification.)

Mr. Berkman (reading): *Mother Earth,* Volume 9, No. 6, August, 1914, page 185, article by A. B. "Down with Militarism." I want to explain something here. The article is entitled, "Down with Militarism, Up with the Rights of Man." Now, I wrote, as editor of *Mother Earth,* I would sometimes sign as editor, sometimes my own name and sometimes a pen name. Now, my pen name usually had A. B., and this is by Charles A. Breckenridge. The middle initials also show the initials A. B. I am reading excerpts (reading same).

Miss Goldman: I want to read (reading). This is Exhibit B, page 85 (reading same).

Mr. Berkman: Exhibit No. 8, a few excerpts from an article of pamphlet that Miss Goldman published about a year ago, page 2 (reading same). That is a pamphlet on "Preparedness."

Defendants' Exhibit C. This is the last little excerpt I will read, and Miss Goldman wants to read one.

Volume 1, No. 2 of *The Blast,* published in San Francisco at that time, January 22nd, 1916. (Reading article on page 2, headed, "Aspirations of *The Blast.*")

Miss Goldman: I hope the jury will pardon Mr. Berkman and myself for reading so much, and tiring them out. I am going to read the new Declaration of Independence, which was written for the *Boston Globe* in July, 1909, by the defendant Emma Goldman (reading).

Mr. Berkman: The defendants rest.

Miss Goldman: The defense rests.

REBUTTAL.

Mr. Content: In rebuttal, I would first like to read the article from Defendants' Exhibit E, which is the August 15, 1915, copy of *The Blast.*

This is, "Worshipping the God of Dynamite." This is published in San Francisco (reading).

Mr. Content: I also want to read this which was read by Mr. Berkman (reading article in regard to bomb).

Now, I would like to read to the jury Defendant's Exhibit L. That is the statement that Miss Fitzgerald read at the meeting of May 23rd.

Mr. Berkman: I object.

The Court: One moment, Mr. Content. You have the right to read that.

Miss Goldman: Have I the right to read it?

Mr. Berkman: I have announced I was going to read it?

The Court: They evidently forgot to read it.

Mr. Berkman: Yes.

Mr. Content: All right. You can read it.

(Read to the jury by Mr. Berkman.)

Mr. Content: I would like to read a part of this over again. I think it is my right to do that, your Honor.

The Court: Yes, you have the right to do it.

(Read by Mr. Content.)

EDWARD J. CADDELL, a witness called in rebuttal on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Content.

Q. You are a patrolman of the New York City Police Department? A. I am.

Q. What is your shield number? A. 349.

Q. How long have you been a patrolman? A. It will be two years next month.

Q. Prior to going into the Police Department, what did you do, what was your occupation? A. Stenography, bookkeeping, various forms of clerical work.

Q. Are you a shorthand reporter? A. Yes.

Q. Prior to your entry into the Police Department, did you have experience in shorthand, and stenography? A. I did.

Q. Did you attend any institution where you learned stenography? A. I did.

Q. Which one? A. Commercial High School, Brooklyn.

Q. And in that institution you took a course in stenography and typewriting? A. I did.

Q. Did you attend a meeting of the No-Conscription League, held at the Harlem River Park and Casino, on the 18th day of May, 1917? A. I did.

Q. And by whose orders? At whose direction did you go to the meeting? A. Detective Barnitz.

Q. Who is sitting here at the table, and also testified as a witness in this proceeding? A. Yes.

Q. Were you present when Emma Goldman spoke? A. I was.

Q. Did you take a stenographic report of her speech? A. I did.

Q. Now, at the time you took this report, where were you with reference to the place where Miss Goldman was delivering her speech from? A. Well, about approximately, about fifty feet, seventy feet.

Q. Where? A. In the box.

Q. You mean on the main floor? A. On the main floor.

Q. Mr. Randolph testified he was in the balcony. You were not on the balcony? A. No, sir; I was not on the balcony.

Q. You were on the main floor? A. Yes.

Q. Seated or standing? A. Seated.

Q. Did you have your stenographic notebook? A. I did.

Q. Have you it in your pocket now? A. I have.

Q. Will you produce it (same produced). Did you have anything else to lean on? A. My knee.

Q. Could you hear Miss Goldman plainly from the place where you were seated? A. Very plainly.

Q. Did she speak slowly and deliberately? A. Slowly and deliberately.

Q. How many words approximately would you say her speech was? A. Well, I had no difficulty

in taking her and I would estimate she was never over 125 words a minute.

Q. Did you make a transcript of your stenographic notes? A. I did.

Q. When did you make that transcript? A. The following day.

Q. Did you see Randolph at the meeting? A. I did not.

Q. Did you know he was at the meeting? A. I did not.

Q. Did you ever compare your notes with Randolph? A. I did not.

Q. Did you ever have the transcript of his notes in your possession? A. No, sir.

Q. Were you called as a witness before the Grand Jury in this proceeding? A. I was.

Q. And was your transcript used before the Grand Jury? A. It was.

Q. Now, I show you a transcript, on which I have written the name "Caddell" in ink, and ask you to look and see if that is the transcript of your stenographic notes?

The Court: Your stenographic notes of Emma Goldman's speech on May 18th, 1917.

A. That is the transcript I made.

Q. Now, at the time you took the stenographic notes, did you take them to the best of your ability? A. I did.

Q. And as accurately as you could? A. I did.

Q. Was there much disturbance during her speech? A. Not that I noticed, nothing unusual.

Q. You had no difficulty in taking what she said? A. I had no difficulty.

Q. Now, in transcribing the stenographic notes into the transcript which I hold in my hand, did you transcribe your notes to the best of your ability? A. I did.

Q. And as accurately as possible? A. I did.

Q. And do you feel safe in saying that the paper I hold in my hand is an accurate transcript of your stenographic notes? A. It is.

Mr. Content: Now, I offer the original stenographic notes in evidence, and I offer the transcript in evidence.

The Court: Just pick out the——

Mr. Content: I will pick it out, but I think they better be marked, just for the purposes of the record. I will call his attention to specific passages.

The Court: All right.

(Marked as follows: The original notes were marked as Government's Exhibit No. 61.

The transcript of the original notes was marked Government's Exhibit 62.)

Q. Now, taking Exhibit 61 in your hand, will you see if you can find on these these words, "We believe in violence, and we will use violence." Have you found it? A. Yes.

Q. Now, will you place a mark there (witness marks on book).

Mr. Content: Now, will you please step down from the stand, and show that to the official stenographer of the Court, Mr. Hawthorne.

(Shown to the official stenographer. Same also shown to Mr. Munter, the stenographer for the defendants, who was in court.)

Mr. Munter: It confirms his transcript, that phrase, if that is of any importance.

The Court: You mean the stenographic notes of that phrase.

Mr. Content: You have the transcript?

Mr. Munter: I have. What Mr. Content read is a correct transcript.

Mr. Content: Now, step right over so that we can all see.

The Court: Now, you have marked that with a sort of a cross, with three intersecting lines.

Mr. Content: Suppose you put an "A" next to that, because we may have occasion to call attention to other passages.

Q. Now, Mr. Caddell, will you see if the following paragraph occurring in the transcript you find in your stenographic notes, where she says, "How many people are going to refuse to conscript, and I say there are enough. I could count fifty thousand, and there are enough to be more, and they are not going to, only when they are conscripted. They will not register." Do you find that? A. I have found that, yes.

Q. Will you place a mark "B" next to that?

The Court: Show that also to the official stenographer and to Mr. Munter.

(Same shown to the official stenographer and to Mr. Munter.)

Mr. Hawthorne (the official stenographer): That is apparently correct.

Q. In other words, did I read that transcript correctly, of the stenographic notes, in the passage indicated by this mark "B"?

Mr. Munter: Yes.

Mr. Hawthorne: Yes.

Q. Now, reading in the same paragraph, Mr. Caddell—(At this point the official stenographer, Robert W. Hawthorne, and the stenographer for the defendants, Paul Munter, were duly sworn).

The Court: Has the testimony which you have given heretofore in the shape of checking up on the stenographic notes of Mr. Randolph been true?

Mr. Hawthorne: Yes.

The Court: And the same question with reference to what you have just done in regard to Mr. Caddell?

Mr. Hawthorne: That is true also.

Q. Now, reading in the same paragraph, skipping the next sentence, there appears this: "It will not be such an easy job, and it will compel the Government to sit up and take notice, and therefore we are going to support with all the means at our support, with money and publicity we are going to support all the men who will refuse to register, and who will refuse to fight"? Have you found that passage, Mr. Caddell? A. Yes, I just read it to you.

Q. Now, will you place the mark "C" next to that? A. Yes.

Mr. Content: Is that correct, Mr. Munter?

Mr. Munter: Yes.

Mr. Content: Is that correct, Mr. Hawthorne?

Mr. Hawthorne: Yes.

Q. Did you look at the last passage marked "C," which I read? A. Yes.

Q. Did it conform to your reading of the stenographic notes, did your stenographic notes conform with the transcript of that statement, as I read it? A. Yes.

Q. Now, Mr. Caddell, will you take your notes and a little further on, a couple of paragraphs further, I read this: "We will have a demonstration of all the people who will not be conscripted, and who will not register"?

The Court: Mark that "D."

Q. Did you find that in your notes? A. I have just read that over with you.

Q. But have you read it as I have read it? A. Yes, you read it accurately.

(Same examined by Mr. Munter and Mr. Hawthorne.)

Mr. Hawthorne: Yes, I do.

Q. Now, in the same paragraph, skipping a sentence, do you find this: "I will say in conclusion that I for one am ready to take the consequences of every word I said, and am going to say on the stand I am taking. I am not afraid of prison." Do you find that, Mr. Caddell? A. Yes, I do.

The Court: Will you mark that "E."

The Witness: Yes.

Mr. Content: Have you looked at that, Mr. Munter?

Mr. Munter: Yes.

Mr. Content: Have I read it accurately, according to your reading of the stenographic notes?

Mr. Munter: Yes, you have.

Mr. Content: And you, Mr. Hawthorne, do you confirm Mr. Munter's statement?

Mr. Hawthorne: Yes.

Q. Now, I want you to look at the part of your notes where Miss Goldman in her speech refers to certain men in Congress or the Senate, "Friends, in Congress there are a few men in the Senate, Stone, LaFollette, etc.," do you find that in your minutes? A. I do.

Q. Have you the name of Stone and LaFollette in the minutes? A. I have.

The Court: Mark that "F."

Q. Were there any other names than those in Miss Goldman's speech? A. That is all I noted.

Q. Do you think she mentioned some you did not know? A. I usually write proper names in longhand, which would take longer.

Q. It is customary in stenography to write proper names in longhand? A. It is if you have time.

(Book shown to the Court.)

Mr. Content: Will you note on the record the Court saw the names written in longhand.

The Court: Well, show it to the jury.

Mr. Content: Oh, yes; show it to the jury; excuse me.

Q. Now, there was also a Russian name, Mr. Caddell——

Mr. Content: Show that to Mr. Hawthorne, to make the record complete, the names of Stone and LaFollette.

(Same shown to the official stenographer and to Mr. Munter.)

Mr. Content: Mr. Hawthorne, do you find these words, "Friends, in Congress there are a few men in the Senate, Stone, LaFollette, etc., who wanted to keep America out of war"?

Mr. Hawthorne: Yes.

Mr. Munter: I also find them.

Q. Toward the end of the speech, a little further along than anything I have read, do you find these words, "You cannot stop the revolutionary spirit." Have you got them? A. I have it.

Q. (Reading) "You cannot stop the revolutionary spirit. It may take as long as one year or two, you can't do it, because the spirit of revolution has a marvelous power of liberty. It can break through bars, it can go through safely. It can come out stronger and braver. If there is any man in this hall that despairs, let's look across at Russia, let's

look across at Breshnavosky, who was tortured by the Russian soldiers." Have you that same spelling in your notes, B-r-e-s-h-n-a-v-o-s-k-y? A. I have that spelling.

Q. Will you please show that to Mr. Munter? A. Yes.

Mr. Munter: Yes, I have seen it.

The Court: Make that mark "G."

Mr. Content: Show it to Mr. Hawthorne. You have seen that same statement there, Mr. Munter?

Mr. Munter: Yes.

Mr. Content: And Mr. Hawthorne, you have seen that same statement there?

Mr. Hawthorne: Yes.

Q. Was that the best you could get out of it? A. I did not make any inquiries, I wrote it as it sounded.

Q. And that is the best you could do with it? A. Yes.

Q. You don't spell Russian? A. No, sir; not very well.

Q. Have you any familiarity with Russian names? A. No.

Q. Now, I will not call your attention to any other passages, but I think you testified that you made this transcript here, that is, Government's Exhibit No. 62, the next day after the meeting? A. Yes.

Q. And you never compared it with Mr. Randolph's transcript? A. I did not.

Q. You never compared your notes with his notes? A. No.

Q. Your work was independent? A. My work was independent of his.

Q. And you took down what you got to the best of your ability? A. Yes.

By the Court.

Q. I understood you to say you did not know Officer Randolph was in the hall? A. No, I did not know he was in the hall.

Q. What is your position, I have missed that? A. Detective in the Police Department, assigned as stenographer.

Q. And like Mr. Randolph, you were assigned to duty by your superior officers? A. Yes, that is correct.

Q. And I assume, on account of your knowledge of stenography, you attend mass meetings, do you? A. I do, when I am ordered.

Q. When you are ordered, I mean. A. Yes.

Q. And you take stenographic notes of such meetings as you are sent to for that purpose? A. Yes.

Q. And were you used before by the Department for that purpose? A. Now, I have been used frequently. That is, when a large meeting has occurred, since conditions have started to exist, which did not exist before.

By Mr. Content.

Q. Have you taken any other speeches of Miss Goldman's since the No-Conscription League was started? A. I did.

Q. Where? A. At Hunt's Point Palace.

Q. June 11? A. June 11.

Q. What other, Forward Hall? A. Yes.

Q. June 14? A. Yes.

Q. Did you take Mr. Berkman's speech that night, too? A. I did.

Q. Have you an independent recollection of that speech, the one in Forward Hall? A. Both, yes.

Q. Do you recall whether Miss Goldman used this phrase, "I defy your law"? A. I distinctly recall it.

Q. You recall that without reference to your notes? A. I do, yes.

Q. Do you know whether Miss Goldman used this phrase, "Not in the wretched little court which is called your law of the United States"? A. I heard her say that.

Q. Without consulting your notes? A. Yes.

Q. Have you your notes of the Forward Hall meeting with you? A. I believe I have.

Q. See if you can find that phrase. Now, in that same paragraph, in the middle of the paragraph, which I marked—suppose you mark that "X," in that book. You find this, "You will say that it is a law. I defy your law." Do you find that? A. Yes.

Q. (Reading) "You say it is a law. I defy your law." Have you got that? A. Yes.

Q. Now, at the end of that same paragraph, you find these words: "Not in the wretched little court which is called your law of the United States"? A. Yes.

The Court: What do you say, Mr. Munter?

Mr. Munter: Yes, the transcript is correct.

The Court: As to both?

Mr. Munter: Yes.

The Court: Show it to Mr. Hawthorne, to get the record straight.

Mr. Content: This really does not matter.

The Court: All right.

Mr. Content: It just goes to the credibility of the witness. This is a fact which was confessed by Miss Goldman. This is a speech of June, 1914.

The Court: Oh, yes.

Mr. Content: You will recall the testimony of Mr. Barnitz, that Miss Goldman introduced, announced this in a previous meeting.

The Court: Yes.

Q. Do you find towards the end of Miss Goldman's speech, about a page before the end, "The moment you enter into court you are like the Dante looking down into the Inferno; 'You who enter here, leave all hope behind'; that is again the American court"? A. Yes.

Q. Did you look at that, is that correct? A. Yes, I have been reading the same.

Q. "That is again the American court"? A. Yes.

Q. Is that what you have, "That is again the American court"? A. Yes, that is correct.

Mr. Munter: That is correct.

Mr. Content: Mark that with a "Y."

That is all.

Q. What is the average of the different speeches at which you have taken Miss Goldman since the campaign started, what would you say was the average words a minute, according to your opinion? A. The average has been very fair for me to take, so it never was more, I do not think, than 125 or 130 words a minute, I never had any difficulty in taking her.

Q. No difficulty? A. No difficulty.

Miss Goldman: I just wish to ask the Court for instructions, since this was given in as evidence, the Hunt's Point Palace notes, and the Forward Hall, because I would like to know would we be permitted to use part of that in our summing up, part of the notes of the stenographer.

Mr. Content: If Miss Goldman wants all this offered in evidence, I will be glad to offer it.

Miss Goldman: I would like to have it in evidence.

Mr. Content: This is the Forward Hall. The Hunt's Point is already in evidence. Mr. Pickler took that, your own stenographer.

The Court: The Hunt's Point is entirely in evidence.

Miss Goldman: It is.

Mr. Content: And it is uncontradicted so far.

The Court: Those are Mr. Pickler's notes, I understand.

Miss Goldman: Yes.

The Court: Now, the Forward Hall is only in evidence to the extent that Mr. Content has offered it, but if you desire the whole thing can go in evidence.

Miss Goldman: What I meant to ask is whether the notes of Mr. Pickler, who was our engaged stenographer, I would like to know whether we can bring that in evidence.

The Court: As to Forward Hall?

Mr. Content: He was not called, he was not interrogated as to Forward Hall.

The Court: Well, I will let you call him for that purpose.

Mr. Content: Is there any dispute about Forward Hall?

Miss Goldman: There certainly is.

Mr. Content: I did not understand it that way.

The Court: Why, certainly you may call him.

Mr. Content: May I settle it this way: There is no dispute about Mr. Pickler's notes as to the Hunt's Point Palace.

Miss Goldman: None whatsoever.

Mr. Content: They are before the Court, and all of that is in evidence, as that transcript is in evidence.

Miss Goldman: Certainly.

Mr. Content: Now, these transcripts of Randolph and Caddell, as to the May 18th meeting, any dispute that you had no stenographer there?

Miss Goldman: No.

Mr. Content: So that you are bound by that testimony?

Miss Goldman: Unfortunately, yes.

Mr. Content: So that the only other meeting I quoted from is the meeting at Hunt's Point?

The Court: No, Forward Hall.

Mr. Content: Yes, Forward Hall, excuse me. I have not offered it all in evidence, but I will be very glad to.

Miss Goldman: Well, I just wish——

The Court: This is on your own rebuttal. You have a right to call Mr. Pickler in regard to the Forward Hall minutes. If there is any point, you can withdraw Mr. Caddell, while you have the right to call him.

Miss Goldman: May Mr. Munter look at the shorthand notes of Mr. Caddell?

The Court: Yes.

Mr. Content: Yes, I will call another witness in the meantime.

By Mr. Berkman.

Q. You are a policeman and detective? A. From the Civil Service, appointed as policeman.

Q. Are you a member of the Police Department? A. I am.

By Mr. Content.

Q. What were you going to say? A. Simply that the Civil Service appointed me to the Police Department.

Q. And you have been assigned to the Detective Bureau? A. Yes, if you look up the Detective Bureau, you can find it.

Q. In other words, your Civil Service rating is patrolman? A. Yes.

Q. And that is your rank? A. Yes.

Q. And the fact that you are a detective is simply the particualr service that you are assigned to? A. Yes.

WILLIAM J. FINERTY, a witness called in rebuttal on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Content.

Q. You are the official stenographer of the United States District Court for the Southern District of New York? A. Yes.

Q. And do you hold the contract with the Department of Justice for all the stenographic work in the criminal branch of the District Court of the United States for the Southern District of New York? A. Yes.

Q. How long have you been a shorthand reporter? A. Twenty years.

Q. Did you attend a meeting held in the Hunt's Point Palace, in the Borough of the Bronx, New York City, on June 4, 1917? A. Yes.

Q. Did you take that evening the speech of Miss Emma Goldman? A. Yes.

Q. Are you able to state what your opinion is as to the average of words a minute of the speech of Miss Goldman in the course of her address on that evening? A. Yes.

Q. What would be your opinion as to her average? A. Approximately 125 words a minute.

Q. Now, sometimes she goes a little more quickly, sometimes a little more slowly? A. Yes.

Q. But you think that is a fair average? A. Yes.

Q. Is it an easy matter to take Miss Goldman's speeches or is it difficult? A. Oh, it is neither difficult nor easy.

Q. Well, I mean is she a clear speaker? A. Good clear voice; I had no difficulty.

Q. Did she enunciate distinctly? A. Yes.

Q. Is that the only occasion on which you took her speech? A. Yes.

The Court: Any questions?

Mr. Berkman: No.

The Court: Is Mr. Randolph here?

(Mr. Randolph came forward.)

The Court: Mr. Randolph, have you your notebook with you?

Mr. Content: It has been marked for identification already, hasn't it?

Mr. Randolph: Yes.

The Court: That is all I wanted to know. I only wanted to know whether the notebook was here.

Mr. Content: I offer Exhibit 30 for Identification in evidence.

The Court: Yes, I think it should be.

(Marked in evidence as Government's Exhibit 30.)

Mr. Content: You will recall Mr. Randolph wrote on a separate sheet certain symbols in stenography.

The Court: Yes. I want that book to go to the jury, to see whether the signs compare with each other.

Mr. Content: Well, there are some slight differences. Sometimes they make an "N" hook instead of an "N" stroke.

Miss Goldman wants this whole paragraph read, so I will read it, instead of the part I read before (indicating).

(Same read by Mr. Content.)

ROBERT W. HAWTHORNE, a witness in behalf of the Government, having been previously duly sworn, testified as follows:

Direct examination by Mr. Content.

Q. Although two persons may use the Pitman system of stenography, is there some difference in making the symbols? A. Yes, according to the individual.

Q. Will you just explain to the jury what that difference is? A. I would like to point it out in the two notebooks of Mr. Randolph and Mr. Caddell.

Q. Mr. Hawthorne, will you explain to the jury the difference in the ending of the symbol "N" in stenography? A. Well, the difference——

Q. Speak a little louder, please. A. The difference is illustrated in the stenographic notes of Mr. Randolph and Mr. Caddell, perhaps better than I can explain it. In one case, in the case of Mr. Randolph's notes, he uses the "N" stroke in writing the word "violence," and in the case of Mr. Caddell's notes, he uses what we call the "N" hook. That is the only difference in the two words. It can be written though, either way, depending entirely on the stenographer. Some men prefer to make the stroke, and some men prefer to make the short hook.

The Court: That is quite a usual difference among stenographers, depending upon the individual?

The Witness: Absolutely.

Q. And that would be the same thing in the Isaac Pitman system? A. Yes, sir.

Q. Mr. Caddell and Mr. Randolph use the same system? A. The same basic system.

Q. And would your explanation be, for example, that some men would connect the word with a

downward stroke? A. In other words, shorthand writers show their individuality just as longhand writers do.

Q. But you have no difficulty, or had no difficulty at the time of these different phrases, when Mr. Caddell's stenographic notes were called to your attention, in reading his notes as I read them from the transcript? A. Not at all.

The Court: Any questions?

Mr. Berkman: No.

Mr. Content: If your Honor please, the Government rests.

Mr. Berkman: The defendants rested long ago.

The Court: Do you desire to make a motion to dismiss, in order to safeguard your case?

Mr. Berkman: Certainly, I make a motion to dismiss the case, as the Government has not brought the least evidence to prove the charge that the defendants advised and urged people not to register. All the testimony in the case proves that the defendants spoke mostly about conscription, and that there was a special statement by Miss Emma Goldman, sent from Springfield, telling the people implicitly that she will not advise them not to register, that she would give them no definite advice on that matter, and that she leaves it to each one to use his own judgment in this matter; and for that reason I claim, or the defense claims, the Government, instead of proving beyond a reasonable doubt the guilt of the defendants, did not make out any case at all against them; that the charge of conspiring the Government don't even begin to prove; no conspiracy has been proven; it has not been proven that either of the defendants advised anyone not to register;

as a matter of fact it has been proven that one defendant or both defendants did advise people to act according to their own conscience and refused to advise them not to register; and on all these grounds and many others which probably it is not necessary to mention just now, we ask that the case be dismissed in the interests of justice.

The Court: May the record show that the motion is made to dismiss the indictment on the ground that the indictment does not set forth a crime; secondly, on the ground that the Government has failed to sustain the allegations of the indictment against the defendants; and you may also note that the defendants move to dismiss the indictment on the further ground that the act in question, which is claimed to have been violated, is unconstitutional. The Court denied the motion, and an exception is reserved to each defendant.

Mr. Berkman: Exception.

Mr. Content: You mean the exception to have been made on behalf of both defendants.

The Court: Both defendants.

Miss Goldman: Yes. May I get on the record just now, I was not prepared to state my basis for dismissal, and I want to know if I would have to do it now?

The Court: If you desire to make a more formal motion on Monday, you may do so, prior to the summing up.

Miss Goldman: All right.

The Court: I only wanted to be sure I would not forget to note the motion on your behalf.

(Whereupon the trial was adjourned to Monday, July 9, 1917, at 10 o'clock A. M.)

New York, Monday, July 9th, 1917.

Trial resumed pursuant to adjournment.

Present:

The Court, counsel and jury as before.

(Mr. Berkman summed up to the jury on behalf of the defendants.)

(Miss Goldman summed up to the jury on behalf of the defendants.)

(Mr. Content summed up to the jury on behalf of the Government.)

The Court's Charge.

MAYER, *J.*:

Gentlemen of the Jury: It is with real sincerity that I express to you my appreciation of the patience that you have displayed throughout this trial, and of the very close and intelligent attention which you have given to the testimony as it was adduced, and to the summing up of the defendants, and of the counsel for the Government.

It is extremely important to concentrate your minds upon the particular question here involved, arising out of the indictment of these two defendants. They are charged by the Grand Jury with an offense which I shall more technically define later, which in effect is this, that they have knowingly and wilfully counselled, abetted and aided persons of the so-called draft age, to violate a statute of the United States, against the peace and dignity of the United States.

Many things, as happens in almost every case, have crept into the case which have a collateral rather than a direct aspect. It was suggested by one of the defendants in his summing up that there

had been brought into the case references to anarchism and the Ferrer school and violence, by virtue of the action of the prosecuting attorney. The fact is, as you all know, that those who first mentioned anarchy and anarchism were the defendants themselves; that the reference to the doctrines of Ferrer were elicted by questions put by them, and that these matters came into the case in great measure because of a question of credibility, to which I shall later with some particularity refer.

This is not a trial of political principles. This cannot be turned into a political or State trial in the political sense. You are not to be misled by any effort to digress your minds from the real issue, which simply is, whether these defendants are guilty or not guilty of the crime charged in the indictment.

This is not a question of free speech. Free speech is guaranteed to us under the Constitution. No American worthy of the name believes in anything else than free speech; but free speech means, not license, not counseling disobedience of the law. Free speech means that frank, free, full and orderly expression which every man or woman in the land, citizen or alien, may engage in, in lawful and orderly fashion; and that free speech is guaranteed to us, and no court would deny it to anyone.

Prior to the enactment of the so-called Selective Service Law, aptly designated such by the President, on the 18th day of May, 1917, any person could discuss in the fullest manner possible the provisions of pending legislation, and any person in discussing that legislation could use even the most vehement language and present any and all arguments that seemed to him or to her best; but when that discussion became embodied into law, then it became the duty of every person living under this Government to obey that law. Individual opinion might still be fully expressed, and proper

agitation for the repeal of such a law continue; but the law itself thenceforth must be obeyed.

This is a republic founded upon principles of democracy. It can remain a republic only so long as the law is obeyed. Obedience to the law is the fundamental basis of American life. Once that basis disappears or is destroyed, the whole fabric is destroyed, and the foundation upon which a Government of free men rests, disappears.

What was the method which the framers of the Constitution devised with an extraordinary and prophetic foresight? They had just won their freedom after long years of struggle, and they realized that the republic which they were founding must rest upon law, that that law must be the expression of the will of the people, through duly organized methods, and through orderly channels. They devised a system which has stood the test now of well beyond a century. It was a system that was to record not merely the passing will of the majority, but it was a system that would be fair to the minority; and therefore, with the greatest measure of care, they devised what the political philosophers have called a system of checks and balances, by which they made the three great departments of government independent of each other. A Law cannot become a law by the mere passage of the Act of Congress. Before it becomes a law it must have the approval of the second branch of the government, the Executive. And even then, if the Constitution has been violated, or has not been accorded with, any person in the land has the opportunity, in lawful fashion, of attacking that law; and the Courts have the power to declare it unconstitutional. And the courts have so declared on many occasions, fearlessly and courageously, laws enacted in the passing passion of the day, to be unconstitutional.

So that you see we have a very elaborate and a very careful system by which before any thought

becomes concreted into law, that law is subjected to discussion in and outside the halls of Congress, and must then have the approval of the Executive, and must then stand the test of an appropriate court inquiry.

With such an elaborate system in the minds and known to Congress, Congress enacted this Section 37 of the United States Criminal Code, phrased in very simple language, that any man may understand, that if two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner, or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to that conspiracy shall be fined not more than Ten Thousand Dollars ($10,000) or imprisoned not more than two years, or both.

On the 18th day of May, 1917, this so-called Selective Service Act became a law. That act provided for a general and comprehensive scheme for calling upon men between twenty-one and thirty years of age, to serve wherever the Government might assign them, whether in the Army or in the Navy, or in industrial or in agricultural pursuits. It was passed, as you know, after elaborate discussion, and when passed, under our system of representative government, it represented the will of the people under our system, and became the law.

Now, as a necessary part of that whole scheme of law, and as a section of that statute, not a separate statute, but a part of the whole scheme, Congress of course saw the need of having a register of those who became or would be within those ages that I have referred to. It was necessary to find out the name and address of every person throughout the country between the ages of twenty-one and thirty, so that later, by a further proclamation of the President, a further carrying out of the statute, the Government could determine whom

to call upon, and in what capacity; and, as you know, elaborate provisions are to be found in that statute in respect of the exemptions; and all these steps were to the end, from the point of view of Congress, of enacting a statute that would be as equal and as fair as human statutes can be in the carrying out of this important measure which received paramount attention from Congress and the President.

Now, what does that Section 5 say? That all male persons between the ages of twenty-one and thirty, both inclusive, shall be subject to registration in accordance with the regulations to be prescribed by the President, and upon the proclamation of the President, or other public notice given by him or by his direction, stating the time and place of such registration, it shall be the duty of all persons of the designated ages, except officers and enlisted men in the regular army, the navy and the National Guard, and the naval militia while in the service of the United States, to present themselves for and submit to registration under the provisions of this act, and that every such person shall be deemed to have notice of the requirements of this act, upon the publication of such a proclamation, or other notice as aforesaid, given by the President, or by his direction; and any person who shall wilfully fail or refuse to present himself for registration, or to submit thereto, as herein provided, shall be guilty of a misdemeanor, and on conviction shall be punished as the statute provides.

Now, there is another provision of the United States Statutes, known as Section 332, of the United States Criminal Code, which also is simply worded and easy to understand: "Whoever directly commits any act constituting an offense defined in any law of the United States or aids, abets, counsels, commands, induces or procures its commission, is a principal."

Now, having in mind these three statutes, let us look at the indictment, eliminating from it as much of the purely legal language as is possible: The Grand Jurors of the United States of America, within and for the District aforesaid, on their oaths present, that on the 18th day of May, 1917, the President of the United States of America duly issued his proclamation, as provided by the Act of Congress, approved May 18th, 1917, to the effect that the time and place of such registration should be between 7 A. M. and 9 P. M. on the 5th day of June, 1917, at the registration place in the precinct wherein those people that register may have their permanent homes; that those who shall have attained their twenty-first birthday, and who shall not have attained their thirty-first birthday on or before the day therein named, are required to register.

So, therefore, on the 18th day of May, by virtue of that Act, it became the duty of every person, citizen or alien, every male person in the United States, to register as the President's proclamation indicated, on the 5th day of June, every person who was between these ages of twenty-one and thirty.

And then the indictment continues: And the Grand Jurors aforesaid, on their oaths aforesaid, do further present that Emma Goldman and Alexander Berkman on the 18th day of May, 1917, and on each and every day thereafter, up to and including the date of the filing of this indictment, at the Southern District of New York, and within the jurisdiction of this Court, unlawfully, wilfully, knowingly, and feloniously did conspire together and agree between themselves and with divers other persons whose names are to the Grand Jurors unknown, to commit an offense against the United States, that is to say, said defendants unlawfully, wilfully, knowingly and feloniously did conspire together and agree between themselves and with the said divers persons whose names are to the Grand

Jurors unknown, that divers persons whose names were to the Grand Jurors unknown, the same being male persons between the ages of twenty-one and thirty, both inclusive, being subject to registration, should knowingly and wilfully fail to register, and fail and refuse to present themselves for registration, and submit thereto, as provided by the aforementioned Act of Congress of May 18, 1917. And the Grand Jurors aforesaid, on their oaths aforesaid, do further present that the said defendants, Emma Goldman and Alexander Berkman, unlawfully, wilfully, knowingly and feloniously did conspire together and agree between themselves and with the said divers persons whose names are to the Grand Jurors unknown, to aid, abet, counsel, command, induce and procure divers persons whose names are to the Grand Jurors unknown, the same being male persons between the ages of twenty-one and thirty, both inclusive, being subject to registration in accordance with the regulations to be prescribed by the President, and upon proclamation by the President, wilfully, and so forth, not to register.

And then the indictment proceeds to state thereafter certain overt acts of the defendants.

Now, the crime of conspiracy requires two elements. One is the agreement, the other is the outward act, which in law is spoken of as the overt act. The word conspiracy means a confederation to effect an unlawful object, even by lawful means, or a lawful object by unlawful means.

The essence of conspiracy is the agreement or confederation. To constitute a conspiracy, it is not necessary that the two or more persons shall meet together, and enter into an explicit or formal agreement. It is not necessary that they should by direct words, or in writing, state what the unlawful plan, or the unlawful means are to be, nor need they set forth at length the details thereof nor the methods by which the unlawful combination is

to be made effective. It is sufficient if two or more persons in any manner, or through the contrivance of either, tacitly come to a mutual understanding to accomplish the thing or unlawful design. Where an unlawful thing is sought to be effected, and two or more persons actuated by the common purpose of accomplishing that thing, work together in any way in furtherance of the unlawful scheme, every one of said persons becomes a member of the conspiracy. The conspiracy is formed and the foundation of the crime is laid when tacitly or expressly the agreement is entered into to accomplish a result that the law forbids.

The statute, however, requires not only that the actual agreement shall have been made, but that at least one of the parties to said unlawful agreement shall do some act to effect the object of the conspiracy; and therefore to warrant a conviction for conspiracy it must be found, first, that there was the agreement, which was conspiracy, and, second, that at least one of the conspirators performed some act to effectuate the object they had in view.

If that last essential is set forth, then all the persons who made the agreement, or who entered into it, no matter after it was made, are members of the conspiracy, no matter whether they all performed acts to effectuate its object, or whether they each performed all of the acts to effectuate its object.

Now, put into simple language, that means simply this: That two persons may enter into an unlawful agreement, and yet neither of them may ever do anything beyond that; and that is the reason that the law requires that there shall be some outward act, but there need be only one act to constitute the overt act. Many acts may be proved, many acts may not be proved, but if you once conclude that the agreement existed, then one act, whether it is lawful or unlawful in itself, so far

as it is in furtherance of the agreement, is sufficient to sustain an indictment for conspiracy, assuming always that these acts and the agreement are proved beyond a reasonable doubt.

You have had such presentation of the testimony, and you have listened to it so closely, that I shall not at this late hour review at any length what you have heard. I shall briefly refer only to certain salient features. What I do not refer to does not mean that I consider that of no importance, but it simply means that I have a desire at this hour merely to give you a very brief outline insofar as it will aid you in understanding the law of the case.

I may say here in passing that, as you well know, the jury is the judge of the facts, and in that domain is supreme, while from the Judge you must take the law, and be guided by his instructions as to the law. I may further say that if anything has been said by either the counsel for the Government or the defendants, or myself, that does not agree with your recollection as to the testimony, you will take your recollection and not theirs or mine.

On the 9th day of May, 1917, if my recollection is right, there was the first meeting of this No-Conscription League. That was followed by the meeting of May 18th, 1917, at the Harlem River Casino. The Government had a legal right to introduce evidence of that meeting, whether the acts there performed constitute in law an overt act, or not. The Government had the right to lay before you by the testimony of witnesses, what took place at that meeting, in order to disclose the intent of the defendants.

What is in a man's mind is discoverable only by what he says and what he does; and therefore it was entirely proper, as a matter of law, that everything that took place at that meeting should be presented to you.

Since the point was raised this morning as to whether or not the President had affixed his signature to the Act in question at the time that the defendant Emma Goldman was speaking, I have endeavored to ascertain when, as a matter of fact, that law was signed, or that Act was signed by the President, because it has been my purpose to have the trial conducted in strict accordance with law, and as fairly as I knew how. I have been informed by one of the representatives of a newspaper, that word was received by the New York newspapers, or at any rate by his, that the Act became a law at twelve minutes after ten that night.

I have also caused to be inquired by long distance telephone from the State Department, when the Act was signed, and the information from there is not sufficiently clear to enable me to say that it was signed prior to the time that the defendant Emma Goldman was speaking; and therefore, I think it but just to say that doubt must be resolved in favor of the defendants on the question of whether or not that was an overt act; and I will charge you, therefore, that that was not an overt act within the meaning of the statute, because of the doubt of proof as to the exact time when the Act was signed.

You may, however, consider, as I said before, everything which took place at that meeting, as indicating to you the purpose and intent of the defendants; and especially in connection with the subsequent acts either by way of meetings, speeches, or writings, which are here in evidence.

Much time was spent in regard to an expression used in that speech, according to the testimony of the two stenographers, or the two patrolmen assigned to stenographic work. What has been suggested or what has been testified to about violence was not germane to the case, and it becomes my duty, therefore, to repeat, perhaps a little more carefully, what I said to you in the course of the

trial. The officer Randolph went there, as you know, pursuant to the orders of his superior officer, for the purpose of making an exact stenographic report of what took place at that meeting so far as, in any event, Miss Goldman's speech was concerned.

The stenographer Caddell—Randolph and Caddell not knowing each other were present—was sent there with a similar view. In determining the credibility of the witnesses, you will apply, of course, the same good common sense that you do in the ordinary affairs of your lives. You may see the manner in which a man testifies, or a woman testifies, you may see how a witness acted upon the stand, you may ask yourselves in respect to these two men, sworn officers of the law, whether or not they would deliberately perjure themselves on the stand, or whether they would insert into their stenographic minutes and their transcript of those minutes, foreign matter utterly different from what was said. The report of Randolph was attacked by the defendants, and thereupon defendants produced certain witnesses to prove that from previous acts of the defendant Emma Goldman, her expressions as to violence had been contrary to that which was reported by Randolph. In addition to that there were read in evidence by the defendants, extracts from various articles. The defendants having introduced this evidence on the credibility of Randolph, this evidence of a collateral character, in addition to the direct evidence of those witnesses who said they had not heard that expression, it became as a matter of law, perfectly sound and proper to then permit the introduction of evidence showing any expressions of opinion upon this subject by either of the defendants, or any facts or circumstances whereby you could or could not infer, as you deemed best, that one or both of these defendants approved or disapproved certain expressions. It was under these circumstances that

the *Mother Earth* of July, 1914, came into the case. That paper being published, as appears from the paper itself, by the defendant Emma Goldman, at a time when the defendant Alexander Berkman was the editor, and a bundle of these papers some three years later being found in the office of the defendant Emma Goldman, it is for you to say on all the evidence in the case, what, as a result of it all, the credibility of the witnesses who were produced is in regard to this particular point. The defendants, as the District Attorney has said, and as they have said, are not on trial for violence, and the matter as I see it now, assumed an amount of importance in time which from my point of view it was not entitled to, although you take your point of view and not mine when I express an opinion of that character.

The real question is whether Randolph and Caddell correctly transcribed the speech of the defendant Emma Goldman, and told the truth in regard to all the speech, and especially in regard to those portions of the speech having to do with registration.

Now, we will pass from that to the meeting of May 23rd, held at Miss Goldman's flat, at which the defendant Alexander Berkman presided. You will take the letter, Exhibit L, to the jury room, and in connection with all the facts and circumstances you will determine the meaning of that letter.

The next meeting is the meeting on the eve of registration, the 4th day of June, announced by the handbills to take place at that date. That meeting was held at the Hunt's Point Palace. I am not referring to the details of these meetings, because they have been fully covered, and you are familiar with them, and there is no use taking up your time.

And then, in addition to that, you will recall, and may read, if you so desire, what was published

in *Mother Earth* and what was published in *The Blast,* and what was said at Forward Hall by one or the other of the defendants, as the case may be.

The expression, "We will defy your laws," or whatever the exact wording was, used at Forward Hall, may be taken as some light upon the intent of the defendants.

Now, words are elusive. It is sometimes very difficult to understand a phrase standing by itself, and therefore it is that when you read an article of any character, you should read the context, and if any person has done any acts in connection with that article, you analyze those acts in order to understand what the words mean.

Words are not always direct. Serious things may be accomplished by the use of words subtly and insidiously. A man may not, in so many words, advise, aid or abet another to do an act, yet he may so frame his language that the inference to be derived from it is clear.

In reading the language in regard to how the word "conscription" is used, you have the right to consider the occasion when used, the circumstances when used, and you have a further right in that connection to remember that registration under the Act, is the first necessary step prior to so-called draft or conscription.

Now, you can take all of this matter, and you can determine what the various words mean with the view of ultimately determining whether there was the conspiracy charged, to counsel, aid and abet and so forth, persons to violate the statute; and if you find, outside of the meeting of May 18th, in their speeches, or in the publications known as *Mother Earth* and *The Blast,* or in any of the writings or sayings of the defendants subsequent to May 18th, that there was counsel or advice or aiding or abetting other persons to violate the statute in question, and you find that be-

yond a reasonable doubt, then you will find the defendants guilty; because every one of these writings, and every one of these speeches, made after the 18th of May, was an overt act. And you will remember what I said, that if you once find the agreement to have been made, it is sufficient under the statute that there shall be one overt act.

Every defendant is presumed innocent until a jury finds him or her guilty, beyond a reasonable doubt. If the evidence justifies, in your judgment, that the accused are guilty, so as to exclude every other reasonable conclusion, you should declare them to be guilty. If you can reconcile the evidence before you with any reasonable hypothesis to sustain their innocence, then you will find the defendants not guilty. This old established rule does not permit you, however, a mere surmise or guess or conjecture that the accused or any of them are possibly innocent. You cannot base your judgment upon a merciful hope, for a reasonable doubt, as the words imply, is only such a doubt as will be entertained by a reasonable man after an impartial and thorough review of all the evidence and all the facts in the case, brought to his attention.

Of course a conspiracy requires two persons, so your verdict must be either that the defendants, both of them, are guilty, or that the defendants, both of them, are not guilty.

I may only say one thing more concerning which, perhaps, there can be little difference of opinion. Whatever may have been the fate of persons of historic note, whether the acts that they did were within or without the law, is quite immaterial in this case; this is a matter of law and order. The law must be obeyed. We are not dealing with a discussion of abstract principles. We are not concerned with the views of the defendants, whether they are right or wrong, on matters foreign to this case. We are only concerned with the evidence in the case.

If you believe them guilty beyond a reasonable doubt, it is a matter of no concern to you, nor to the Court, what their views may be. If you believe them not guilty, then equally are we not concerned with their political views.

I repeat in conclusion, and lay it upon you most earnestly, that this is not a trial of free speech. This is an indictment for crime, and the duty which rests upon you is to determine on the evidence whether or not the defendants are guilty of the crime charged in the indictment. Much has been said by the defendants and by the counsel for the Government as to what the country may think of your verdict. Gentlemen, we are within the solemn confines of the court room. All the country wants from you is a just verdict on the evidence, a verdict that I know you will render, because you have given such close attention, and confining yourself to that it is your duty by deliberate consideration to arrive at a conclusion on the evidence, not to permit yourselves, as I am sure you will not, to be diverted into any attempt to make it seem as though any person was here on trial for the expression of any opinion. The sole question is, has the Government proven the guilt of the defendants beyond a reasonable doubt? If so, your verdict is "Guilty"; if not, your verdict is "Not Guilty."

Any requests to charge? Any exceptions?

Mr. Content: No requests from the Government.

Mr. Berkman: I do not know what the procedure is about taking exceptions.

The Court: You can take any exceptions now. You must take them now.

Mr. Berkman: In particular, or general?

The Court: You must take particular exceptions. You may call the Court's attention to any error made.

Mr. Berkman: No particular exceptions, but, if permissible, just may I have a general exception?

The Court: You may. If there is anything—give me an idea of what you want on the record.

Mr. Berkman: Just as a matter of record.

The Court: As a matter of record, you say you want a general exception.

Mr. Berkman: Yes.

The Court: I will give it.

Miss Goldman: As a point of instruction, I want to know—I would like to ask your Honor to instruct the jury that as long as the articles are in evidence of July, 1914, representing the report of meetings, which is a legitimate method common among all large publications to reprint or report things that have happened in the way of news, that that shall be ruled out as evidence.

The Court: I get your point; I am glad you called my attention to it. The defendants are not responsible for the utterances of persons other than themselves in the July, 1914, meeting, as such. One article that was called "A Gauge of Chance," written by the defendant, was not a speech made at that meeting. You may take into consideration that papers publish speeches. You must also take into consideration whether from the relations of the defendants with these people and the finding of this bundle of papers in the *Mother Earth* office at the time of the arrest, whether the defendants approved the sentiments in those articles, all on the question of credibility.

Mr. Berkman: Two requests for the defendants: First, that the Court charge the jury that even if they believed one or both of the defendants committed an overt act, or had told people not to register, but not as a result of an agreement or a conspiracy, then the jury must acquit.

The Court: Certainly, that is quite right. If there is no agreement there cannot be a conviction.

Mr. Berkman: And the second one, we ask the Court to charge that all jurymen must be convinced beyond a reasonable doubt before they can find the defendants guilty.

The Court: I so charge.

Mr. Berkman: That even if one is not convinced of their guilt beyond a reasonable doubt he must vote for their acquittal.

The Court: My charge is that the entire jury must bring in their verdict, and the jury must be satisfied beyond a reasonable doubt.

Mr. Content: Will you just make this one point there, as long as it is raised: That your Honor charged that one overt act was enough; will you add there one overt act by one conspirator?

The Court: Yes, one overt act by one conspirator is enough. If you find the agreement, then the acts and words of one conspirator are admissible as against the other, and binding on the other.

(The Marshal was then sworn in charge of the jury, and the jury retired to the jury room.)

New York, July 9, 1917, 6 P. M.

(The jury returned a verdict of guilty at 6 P. M.)

Miss Goldman: We move to set aside the verdict as being against the weight of evidence. I think that is the way you move to set a verdict aside.

The Court: The stenographer may note that the motion is made, with all formalities, to cover all grounds upon which a motion to set aside a verdict may be made.

Miss Goldman: I wish to ask that sentence be deferred for a few days and that bail be continued —that the present bail be continued meantime— because we wish to arrange our affairs, which we have had no time or opportunity to do during the trial.

The Court: The motion to set the verdict aside is denied.

Mr. Content: The Government moves for sentence; and the Government feels, in a case of public importance like this case, that the judgment

and mandate of the Court should be speedily handed down.

Miss Goldman: Well, the motion of setting the verdict aside is denied; we have an exception, of course.

The Court: The motion in regard to the bail is denied. Application for that may be made under the practice of this Court to the Circuit Court of Appeals.

Mr. Berkman: The motion to defer sentence is denied?

The Court: Yes.

Mr. Berkman: Exception.

The Clerk: Alexander Berkman to the bar. Have you any reason why the sentence of the Court should not now be pronounced upon you?

Mr. Berkman: Well, I think it is only fair to suspend sentence, to give us a chance first of all to arrange matters. And the fundamental reason that sentence should not here be pronounced is that we are innocent of the charge and we are convicted as anarchists out of prejudice and bitterness. That is all.

The Clerk: Miss Goldman, have you anything to say why sentence should not be imposed?

Miss Goldman: I wish to say that the very fact that we were refused to have sentence deferred for several days to arrange our affairs proves that the Court is prejudiced because we are anarchists; because we were frank, and because we stood by our opinions, and because we are going to stand by our opinions.

Mr. Content: I have very little to say, your Honor. Both the Court and the jury were fully enlightened as to what the defendants did under the particular acts upon which they were charged. However, I should feel derelict in my duty to the Court if I did not inform the Court that in 1892 the defendant Alexander Berkman was convicted of attempted murder in Pittsburgh——

Mr. Berkman: I object.

Mr. Content: I have a right to say this.

The Court: He had no right to bring this to the Court's attention during the trial. He has a right to bring any matter to the Court's attention before sentence is pronounced.

Mr. Content: I beg to bring to the Court's attention that the defendant Alexander Berkman on July 22nd, 1892, was convicted in Pittsburgh, Pennsylvania, upon an indictment charging him with attempted murder. That he was sentenced upon that conviction to serve twenty-one years in the Western Penitentiary of Pennsylvania. And from my understanding of the record he served fourteen years out of this twenty-one years, having been released under the Pennsylvania law on parole at the expiration of two-thirds of his sentence.

I shall not refer to his other arrests, because that is the only other absolute conviction I have a record of; but I feel that the Court should take into consideration the fact that this man who says he does not believe in violence went to the office of a man and there shot him down in cold blood, or attempted to do so, without giving him a chance to fight for his life. And such is the man who believes in universal peace, and believes it is wrong for one human being to kill another human being in warfare. That is the sort of man who goes into another man's office and kills him, or rather tries to kill him, like a rat in a hole.

As to the defendant Emma Goldman, she has been a great disturber of the peace for many years. In 1893 she was convicted in this City before the late Judge Randolph Martine of unlawful assembly and inciting to riot and convicted under several indictments; and at that time she was sentenced to serve one year in the New York County Penitentiary at Blackwell's Island. And I call attention to the fact that in this case the witnesses for the People testified that Miss Goldman told the audience in

the German language, in Union Square, that if they did not get what they wanted peaceably, they should go into the homes of the rich and take it by force; if they did not get what they wanted in any other way, to go ahead and take what they wanted by force. She denied that charge on the witness stand and said she did not believe in violence at that time, but the jury found her guilty and she was sentenced to serve one year on Blackwell's Island by Judge Martine.

I will not refer to the other charges, because she has been arrested many times and convicted of minor offenses; but I believe that the Court has the right to know that when she was convicted for unlawful assembly and inciting to riot before Judge Martine she then denied having made the statements which were attributed to her, the same way as her witnesses have denied the use of certain language which would bring her under the particular statute here.

The Court: Gentlemen of the Jury, I wish you would remain, for I desire to say, before I may forget it, that I think the appreciation of the Court and of the community is due to you for your fearless and prompt manner in which you have discharged your duty. I do not wish to express a word that might be construed as in any manner flattering you, but I have never sat on any case where more earnest men have been jurymen who have paid closer and better attention to the case than you have; and I want my association in this case to be a remembrance of my appreciation.

The defendants may remain seated.

It has undoubtedly been a source of regret to the gentlemen of this jury, as it has been to the Court, and possibly to those who have sat in the court room for these many days, that the extraordinary ability displayed by the two defendants has not been utilized in support of law and order. The magnetic power of one of the defendants, if thus utilized,

might have been of great service in reforms legitimately advocated for the betterment of conditions as the world goes on. That power might have been of tremendous service, and more especially among the millions of humbler people who come to our country in an aspiration for liberty.

We understand, I think, what has been spoken of as the psychology of the defendants, and I am quite sure they understand what might be called the psychology of the courts.

We do represent the existing order of things in so far as that means that progress must be accomplished in this country by lawful means. We regard as enemies of the Government, in the most serious sense of that term, those who advocate the abolition of this Government, those who counsel disobedience to our laws, and those who induce the less strongly minded to disobey our laws. These may be very old and to some very tiresome sentiments. But they are the sentiments that from our point of view have become a part of our lives, won at great expense by the Revolutionary bodies, by the men who fought in the great Civil conflict, and by the men who now are willing to stand by their country when their country needs them. We have no place in this country for those who express the view that the law may be disobeyed in accordance with the choice of an individual. I am expressing not my view alone, I am expressing the views of what we in America understand to be the views of a true democracy and a true republic. The Government has thus far enacted no special statute to deal with those who counsel disobedience, and who advise insurrection, who seek to reach and control the humbler people, some of whom do not understand things, by methods such as were disclosed in this case. And I desire, so far as I am concerned, that my words shall be perfectly understood, not merely by those who are here, but by anyone else who has in his mind that he is stronger than the law. It

makes very little difference what becomes of a single administrator of the law, whether he be officer, Marshal, District Attorney or Judge. They come and go.

But in this country the law is an imperishable thing that lives forever. And it merely uses for the moment, as its administrators, some human beings who may at any time give way to others.

And so, when I impose this sentence, I am imposing it on the one hand with the regret that these abilities were not better used; I impose it on the other hand with the profound conviction that I am speaking for organized law, for the kind of liberty that we know and we understand who have been privileged to live in this country, that we believe is a true democracy.

The maximum sentence under the statute is two years and ten thousand dollars ($10,000) fine.

I sentence the defendant Alexander Berkman to the United States Penitentiary in Atlanta for two years and fine him the sum of ten thousand dollars ($10,000).

I sentence the defendant Emma Goldman to the State Penitentiary at Jefferson City, Missouri, for two years and fine her the sum of ten thousand dollars ($10,000).

I further direct the District Attorney, under the provisions of the Immigration Act, to forward to the Commissioner of Immigration the record of this conviction in order to determine in due course whether or not either or both the defendants are subject to the provisions as to deportation, provided in that act. That is a matter which is under the statute and administrative matter for the Commissioner of Immigration. And the District Attorney is directed to forward the record of this conviction to the Commissioner of Immigration.

I may say, in concluding, that the responsibility for the custody of the defendants is with the Marshal for the Southern District of New York. He

may exercise such discretion in that regard as he deems best.

The Court is now adjourned without date.

Miss Goldman: Just one moment, please. We wish to ask—as we intend to appeal the case—we wish to ask now for a last instruction and information whether we make the appeal now, or whether we have a certain time for the preparation of the appeal.

The Court: You have—under our rule—you have ninety days within which to sue out a writ of error. And in order that there may be no mistake or confusion on the subject the stenographer will note that the defendants may have ninety days within which to sue out a writ of error.

Miss Goldman: We should, however, like to know more specifically whether we may, after we are taken away from here, consult regarding the appeal, or whether we will be spirited away in a speedy manner. We would like to know that to be quite clear where we stand.

The Court: The fullest opportunity within the ninety days will be given to the defendants to consult counsel and prepare their assignments of error and the writ of error. If in the course of that period there is no such opportunity, the defendants may address a communication to the Court and the Court will see that such an opportunity is afforded them. As a matter of fact, such opportunity is your right during the coming ninety days.

Miss Goldman: Well, may I just ask, please, what the procedure is, as we don't know what it is, regarding whether we can now—I mean within the next hour or two—consult with counsel regarding the appeal? We ought to know that.

The Court: The custody of the defendants is with the Marshal, and the Marshal will deal with the matter referred to. The Court is now adjourned.

Miss Goldman: I wish to thank the Court for the marvelously fair trial we have received. I hope history will record the fairness; and history will also record, your Honor, that the two people asked for an adjournment, or rather a deferring of a sentence for two days to arrange their affairs, and yet the Court considered them so dangerous to the United States that it would not give them two days, which are given to the most heinous criminal. Thank you very much.

Government's Exhibit 1.

NO CONSCRIPTION!

Conscription has now become a fact in this country. It took England fully 18 months after she engaged in the war to impose compulsory military service on her people. It was left for "free" America to pass a conscription bill six weeks after she declared war against Germany.

What becomes of the patriotic boast of America to have entered the European war in behalf of the principle of democracy? But that is not all. Every

country in Europe has recognized the right of conscientious objectors—of men who refuse to engage in war on the ground that they are opposed to taking life. Yet this democratic country makes no such provision for those who will not commit murder at the behest of the war profiteers. Thus the "land of the free and the home of the brave" is ready to coerce free men into the military yoke.

No one to whom the fundamental principle of liberty and justice is more than an idle phrase, can help realize that the patriotic clap-trap now shouted by press, pulpit and the authorities, betrays a desperate effort of the ruling class in this country to throw sand in the eyes of the masses and to blind them to the real issue confronting them. That issue is the Prussianizing of America so as to destroy whatever few liberties the people have achieved through an incessant struggle of many years.

Already all labor protective laws have been abrogated, which means that while husbands, fathers and sons are butchered on the battlefield, the women and children will be exploited in our industrial bastiles to the heart's content of the American patriots for gain and power.

Freedom of speech, of press and assembly is about to be thrown upon the dungheap of political guarantees. But crime of all crimes, the flower of the country is to be forced into murder whether or not they believe in war or in the efficacy of saving democracy in Europe by the destruction of democracy at home.

Liberty of conscience is the most fundamental of all human rights, the pivot of all progress. No man may be deprived of it without losing every vestige of freedom of thought and action. In these days when every principle and conception of democracy and individual liberty is being cast overboard under the pretext of democratizing Germany, it behooves every liberty-loving man and woman

to insist on his or her right of individual choice in the ordering of his life and actions.

The No-Conscription League has been formed for the purpose of encouraging conscientious objectors to affirm their liberty of conscience and to make their objection to human slaughter effective by refusing to participate in the killing of their fellow men. The No-Conscription League is to be the voice of protest against the coercion of conscientious objectors to participate in the war. Our platform may be summarized as follows:

> We oppose conscription because we are internationalists, anti-militarists, and opposed to all wars waged by capitalistic governments.
>
> We will fight for what we choose to fight for; we will never fight simply because we are ordered to fight.
>
> We believe that the militarization of America is an evil that far outweighs, in its anti-social and anti-libertarian effects, any good that may come from America's participation in the war.
>
> We will resist conscription by every means in our power, and we will sustain those who, for similar reasons, refuse to be conscripted.

We are not unmindful of the difficulties in our way. But we have resolved to go ahead and spare no effort to make the voice of protest a moral force in the life of this country. The initial efforts of the conscientious objectors in England were fraught with many hardships and danger, but finally the government of Great Britain was forced to give heed to the steadily increasing volume of public protest against the coercion of conscientious objectors. So we, too, in America, will doubtless meet the full severity of the government and the condemnation of the war-mad jingoes, but we are nevertheless determined to go ahead. We feel confident in arousing thousands of people who are con-

scientious objectors to the murder of their fellow men and to whom a principle represents the most vital thing in life.

Resist conscription. Organize meetings. Join our League. Send us money. Help us to give assistance to those who come in conflict with the government. Help us to publish literature against militarism and against conscription.

We consider this campaign of the utmost importance at the present time. Amid hateful, cowardly silence, a powerful voice and an all-embracing love are necessary to make the living dead shiver.

NO-CONSCRIPTION LEAGUE,
20 East 125th St., New York.

Government's Exhibit 2.

HARLEM RIVER PARK AND CASINO
Second Avenue, 126th to 127th Streets
Harlem River Park Company, Proprietors
Hubert Motz, Gen'l Mgr.

New York, May 11th, 1917.

We, the undersigned, individually and as a committee of the NO-CONSCRIPTION LEAGUE, do hereby engage Harlem River Park and Casino for Friday, May 18th, 1917, for the purpose of a Mass-Meeting. Gates open at 7 p. m. and we do hereby agree to accept and make this contract, subject to all conditions described on reverse side, which form part of this contract, under penalty of a forfeiture of all rights or claims for the use of the above named place, or any part thereof, or of any money deposited or paid on account, and we hold ourselves individually and the said League, responsible on the following terms:

Harlem River Ball Room, rent to be $50.00
Deposit: $10.00
Balance: $40.00

For No-Conscription League,

ALEXANDER BERKMAN,
Committee.

For Proprietor Harlem River Park Co.,

H. MOTZ,
Managing Director.

Government's Exhibit 3.

This is a duplicate of Exhibit 2, but is marked as follows:

"Paid in full May 18, 17. Harlem River Park Co., H. Motz."

Government's Exhibit 4.

Leonard D. Abbott, Sec'y
M. E. Fitzgerald, Fin. Sec'y

Telephone
Harlem 6194

NO-CONSCRIPTION LEAGUE
20 East 125th Street
New York

WE oppose conscription because we are internationalists, anti-militarists, and opposed to all wars waged by capitalistic governments.

WE will fight for what we choose to fight for; we will never fight simply because we are ordered to fight.

WE believe that the militarization of America is an evil that far outweighs, in its anti-social and

anti-libertarian effects, any good that may come from America's participation in the war.
WE will resist conscription by every means in our power, and we will sustain those who, for similar reasons, refuse to be conscripted.

(Same cut as Government's Exhibit 1.)

May 25, 1917.

Dear Friend:

We are sure that you are interested in the anti-war agitation. You cannot fail to realize that the patriotic clap-trap which is now propagated on such a huge scale by the press, the pulpit and the authorities only represents a desperate effort to blind the people to the real issues confronting them. The main issue now is the Prussianizing of America.

Already America has demonstrated its autocratic tendencies in passing the Conscription Bill without making even the slightest proviso for conscientious objectors to human slaughter. There are thousands of men who will not under any circumstances allow themselves to be conscripted. First, they consider all wars a fight between thieves who are too cowardly to do their own fighting, hence force the masses to do the cruel thing for them. Secondly, they will not be conscripted because they refuse to be coerced into taking human life at the behest of their masters. Something must be done to sustain these men to whom the Ideal of Liberty and Human Solidarity is not a mere phrase, but a vital, living fact.

With that in view, we have organized the *No-Conscription League*. Its first public activity took place on Friday evening, May 18th—a mass meeting attended by 8000 men and women who pledged their decision not to register or to be conscripted into killing. It was an inspiring demonstration

and so tremendous in its scope that all the dailies were stirred from their usual attitude of silence.

More than any other government, perhaps, the Washington authorities are very sensitive to publicity and criticism, especially on the part of those who can reach large sections of the people both here and abroad. The American government cannot afford to have the world know that, while it pretends to be interested in democracy and to fight against Prussianism in Germany, it is at the same time Prussianizing America. We therefore feel that the agitation of the League, energetically started in New York and undoubtedly spreading over the whole country, will create sufficient sentiment to morally compel the authorities to recognize conscientious objectors.

Realizing this, we appeal to you for moral and financial support to enable us to carry on an effective campaign by means of meetings, (A Mothers' No-Conscription Demonstration to take place on the eve of registration day, June 4th, has already been arranged) manifestos and, above all, through the channels of *Mother Earth* and *The Blast*. We consider this campaign of the utmost importance at the present time, and we feel confident that you will not withhold from us your immediate generous support. Send your contribution at your earliest convenience.

Cordially,

BS&AU
12646

P.S. The *No-Conscription League* has published 25,000 manifestos, copy of which is enclosed.

Government's Exhibit 5.

(Same heading as Government's Exhibit 4.)

Dear Friend:

I know that you will be glad to learn that the NO-CONSCRIPTION MASSMEETING of Monday, June 4th, was the greatest event that has taken place in New York in many years. There were fully 35,000 that tried to gain admission. Only two thousand were allowed to enter the hall, but the thousands on the outside took up the applause that reached them from the meeting and filled the air with revolutionary songs. The enthusiasm was tremendous, and most inspiring. It is a miracle that a massacre was prevented because the police, the soldiers and the home guards were there ready for that purpose. But the temper of the great gathering was such that the authorities feared to go too far. Our people showed their determination to carry the fight against conscription to the end.

The great massmeeting was the first step in the campaign we are planning against conscription. The newspapers of this City admit that fully 20,000 failed to register, but we know that the number is at least four times as large and that half of those who did register did so protesting as conscientious objectors. There is no doubt that there will be terrible conflicts when the government begins conscripting the people. Meanwhile our work must continue with renewed hope and energy. Never in the history of this country have the revolutionary elements had a greater opportunity to demonstrate their loyalty to the ideals and principles of the International, and to give courage, inspiration and expression to the great masses of people in this country who are bitterly opposed to tyranny and war.

Dear Friend, I know that you realize the great importance of the work the NO-CONSCRIPTION LEAGUE is doing and that you will support our efforts. I therefore take the liberty of sending you a Subscription List. No doubt you know people who are opposed to war and conscription and whom you could interest to help us. Funds are urgently needed. The money collected is to be used not only for the No-Conscription agitation and literature, but also for a country-wide publicity in behalf of those who are falling into the clutches of the law. We ourselves may be arrested any moment, but we want the work to be in a condition to continue on a large scale in behalf of the conscientious objectors. I count on your co-operation. These are exceptional days and much can be done through the co-operative effort of the rebels of this country. I hope to hear from you soon.

Fraternally,

P. S. Letters, money orders and checks should not be addressed to the No-Conscription League (for obvious reasons) but to the undersigned.

Government's Exhibit 6.

This is a circular letter with the same heading as Exhibit 4. It begins "Dear Friend: Your letter of recent date received and your contribution has been credited toward the work of the League." The balance of the letter is identical with Exhibit 5.

Government's Exhibit 7.

(Envelope)

No-Conscription League	Postmarked	Canceled
20 East 125th Street	May 30, 1917	Stamp
New York	Station J.	

WILLIAM C. DEMOREST

18 E. 94th St.

N. Y. C.

Government's Exhibit 7-A.

This is a circular letter the same as Government's Exhibit 4, except that it is signed by Alexander Berkman and that on the bottom appear the words "Checks or money order to M. E. Fitzgerald.".

Government's Exhibit 7-B.

This is a circular as follows:

NO · CONSCRIPTION
MASS MEETING
on the eve of registration
Monday, June 4, 8 P. M.

HUNTS POINT PALACE

953 So. Boulevard
One Block from Simpson St. Subway Station
All Bronx Cars Transfer

Auspices of No-Conscription League
of New York

SPEAKERS: Emma Goldman; Alexander Berkman; Louis Baury; "Mother" Yuster; Mrs. Stella Comyn Ballantine; Mrs. Shapiro; Leonard D. Abbott; Kate Siebel; Rose Yuster; Robert H. Hutchinson; Louis C. Fraina; Winter Russel and others, among them young men of conscriptable age.

Doors open 7 P. M.

Admission Free *Box Seats* 25c

Mothers, Fathers, Sons—Turn Out in Protest
Against Conscription!

Government's Exhibit 7-C.

This is a circular similar to Government's Exhibit 1.

Government's Exhibit 8.

(Envelope)

Postmarked May 31, 1917 Station F — Canceled Stamp

CITY EDITOR
New York Times
New York.

Government's Exhibit 8-A.

This is a circular similar to Government's Exhibit 1.

Government's Exhibit 8-B.

This is a circular letter similar to Government's Exhibit 7-A.

Government's Exhibit 8-C.

NO-CONSCRIPTION LEAGUE
20 East 125th Street
New York.

Please find contribution of $.....for the work of the No-Conscription League, and enter me on the membership list.

Name .....
Address .....

Government's Exhibit 9.

(Envelope of No-Conscription League)

Postmarked May 30, 1917 Station L — Canceled Stamp

CLARENCE LYMAN COLLINS

The Ansonia

N. Y. C.

Enclosed in this envelope were Government's Exhibits 9-A, 9-B and 9-C. They are similar to Government's Exhibits 8-A, 8-B and 8-C.

Government's Exhibit 10.

Postmarked May 25, 1917 Sta. L — Canceled Stamp

FRANK HARRISON
219 S. Penn St.
Denver Colo.

(Stamped across face) "Returned to writer."

Government's Exhibit 10-A.

This is a circular the same as Government's Exhibit 1.

Government's Exhibit 10-B.

This is a circular letter the same as Government's Exhibit 4, except that it is signed by Emma Goldman.

Government's Exhibit 10-C.

This is a subscription blank the same as Government's Exhibit 8-C.

Government's Exhibit 11.

This is an application to the New York Telephone Company for telephone service for office at 20 East 125th Street, dated May 12, 1917, and signed Alexander Berkman, subscriber.

Government's Exhibit 13.

This is a receipt for cut shown on Government's Exhibit 1, delivered by The Walker Engraving Co. to The Graphic Press, 63 Cooper Square, dated May 14, 1917, and signed M. Epstein. Also another receipt for a copy of the same cut signed by A. Berkman and dated May 14, 1917.

Government's Exhibit 14.

This is a receipt similar to Government's Exhibit 13, dated May 10, 1917, for an enlarged copy of the cut on Government's Exhibit 1. Also a receipt for a copy of same cut signed Alex. Berkman and dated May 10, 1917.

Government's Exhibit 15.

This is a receipt similar to Government's Exhibit 13, signed by Grayzel Press, Inc., dated June 1, 1917, and is for the cut used on the cover of the issue of *Mother Earth* marked Government's Exhibit 25. Also a receipt for a copy of the same cut signed "Mother Earth Pub. Ass'n."

Government's Exhibit 16.

This is a receipt similar to Government's Exhibit 13, for the cut used on the cover of the issue of the *Blast* marked Government's Exhibit 26, and dated May 31, 1917. The receipt is marked "Cancelled."

Government's Exhibit 17.

(Letterhead of No-Conscription League.)

June 4, 1917.

New York Produce Exchange Bank
Harlem Branch.

Gentlemen:—

We are sending you a number of checks made out to the order of the No-Conscription League. As you will see by the letter head Miss M. E. Fitzgerald is financial secretary. She has endorsed all of the checks and please place them to my credit.

Thanking you in advance.

Yours truly,

ALEXANDER BERKMAN.

I hereby authorize the New York Produce Exchange Bank to place any checks endorsed by me for No-Conscription League to the credit of account of Alexander Berkman.

Jun 4 1917.

M. E. FITZGERALD,
Fin. Secy.

Government's Exhibit 18.

Check stub book of Alexander Berkman's account in Harlem Branch of New York Produce Exchange National Bank. Stubs Nos. 65 to 96, inclusive.

Government's Exhibit 19.

Record book of subscriptions received by No-Conscription League, May 11, 1917, to June 10, 1917, inclusive.

Government's Exhibit 20.

Canceled check on New York Produce Exchange National Bank, Harlem Branch, signed Alexander Berkman, payable to Hotel Brevoort, June 12, 1917, for $46.75.

Government's Exhibit 21.

Same as Government's Exhibit 20 dated June 16, 1917, for $17.87.

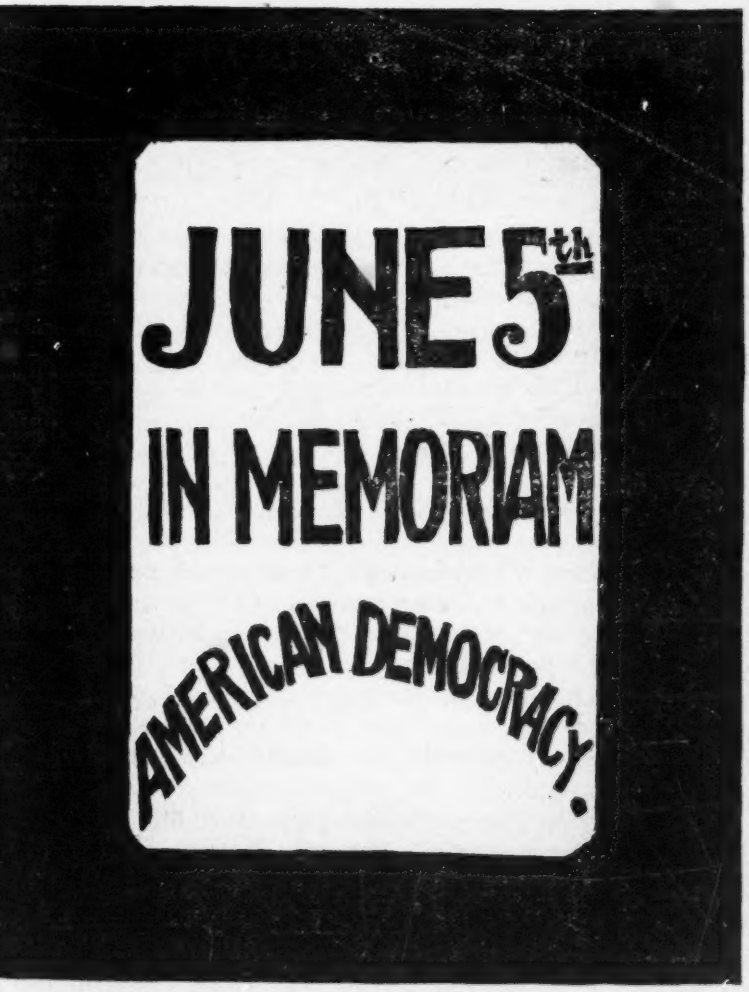
Government's Exhibit 22.

Same as Government's Exhibit 20 dated June 18, 1917, for $12.95.

Government's Exhibit 24.

This is a circular identical with Government's Exhibit 7-B.

Government's Exhibit 25.



The following are the material extracts from this exhibit:

MOTHER EARTH

Monthly Magazine Devoted to Social Science and Literature

Published Every 15th of the Month

EMMA GOLDMAN, Publisher and Editor, 20 East 125th Street, New York, N. Y.

Entered as second-class matter April 9, 1906, at the post office at New York, N. Y., under the Act of Congress of March 3, 1879.

Vol. XII. JUNE, 1917 No. 4.

* * * * * *

JUNE 5TH—

By Saxe Commins

Time is not the ally of those traducers of Democracy who enact laws which bind over their constituents irretrievably. Those opportunists know the value of haste, of secrecy and of ceremony, and they act accordingly. They have leisure not for repentance but for gloating over the fruits of their deception. And that deception promises nothing less than a permanent military organization, so well and so insidiously planned as to make it self-perpetuating. Moloch and Mammon are to be made immortal on Coronation Day—June 5th.

The ceremony is in preparation; none of its detailed rites is being neglected. To the lurid streamers, to the noise of the hurdy gurdy, with stage managed "spontaneity," will the free, proud youth of America proclaim their sovereign, a sovereign whose sway will be earthly and divine. Te Deum, Te Regem laudamus.

"It is to be a day of consecration and rejoicing" is the advance notice issued from the pulpit. To

us it will be a day of repudiation. The dawn of June 5th will be greeted with loud hosannahs and the crash of cannon, fitting tribute. Not the Hosannah which filled the valleys near the mountain on which it was said gently: "Thou shalt not kill," but the shrieked approval arising above the din of our stained cities, from each enclosed, vitiated recruiting station.

Elsewhere will be silent men on this day who will not be engulfed by the murky tide. They will go, each to his appointed task, oblivious to the sonorous beckoning of the mob. They will be those few who though deprived of time for consideration of the subtleties of the registration law had the foresight to plan a course of action for just such a contingency. Others there will be who will waver and fall prey to the influence of ritualistic contagion. For their consideration during the few days that remain before the Fifth, we direct not our counsel but the attitude we have taken for ourselves. We do not wish to impose our programme on any one, we only can point the road we take ourselves.

"We have been deprived of time for reflection and have lost, consequently, our critical judgment. We have not been able to crystallize our thoughts, we have not been able to find kindred thoughts for the few that we have been able to crystallize. Where ours were definitely formed, others have been vague. And there was always conflict on this issue. What is to be done? Whatever protest is to be made must be made in full consciousness, else it is worthless. We know we must dissent, it is agreed. But how? By doing so may we not be acting precipitately and unwisely? We want to make of this a pure issue of Principle, but we have not been able to put into words, for lack of time, our most deeply rooted emotions. . . ." These are some of the many doubts and questions that assail the minds of numberless conscientious objec-

tors as June 5th approaches. What, then, is to be done?

We can decide for no one. We do not claim omniscience, nor the gift of prophecy. But we can point out certain self evident truths. Draw from them your own conclusions and decide your course of action.

The conscription bill, to which liberals, generally, are opposed, carries hidden beneath it well defined facts which must be revealed. In its entirety this act is the instrument of a powerful despotism, more harmful by far than are visible and destructible armaments. We know that this bill perverts the meaning of the much advertised war theme—Democracy. These facts are too manifest for reiteration. There are no subtle distinctions made by liberty loving people in their objection to conscription in toto. Why, then, should there be no militant objection to the first integral part of it—REGISTRATION?

Only one interpretation can be assigned to the acceptance of this major portion of the conscription bill by those who are opposed to war, and that is due to their lack of time for reflection. Secrecy has obscured its features too long. Registration is literal and final in its meaning. *It is the first step over the precipice into the bottomless pit of conscription.* It is the first and only step necessary toward the establishment of an institution only comparable to the now extinct Third Section of Russia. It is the resignation of the rights of the individual to a militarily supervised government. It implies the abrogation of every instinct as well as any principle you may have against bearing arms. It means that you sanction and wilfully choose obedience and that you repudiate your right to resistance. . . .

Do what your conscience dictates on June 5th and thereafter.

* * * * * *

THE NO CONSCRIPTION LEAGUE

Conscription has now become a fact in this country. It took England fully 18 months after she engaged in war to impose compulsory military service on her people. It was left to free America to pass a conscription bill six weeks after war was declared.

What becomes of the patriotic boast of America to have entered the European war in behalf of the principle of democracy? But that is not all. Every country in Europe has recognized the right of conscientious objectors—of men who refuse to engage in war on the ground that they are opposed to taking life.

Yet this democratic country makes no such provision for those who will not commit murder at the behest of the profiteers through human sacrifice. Thus the "land of the free and the home of the brave" is ready to coerce free men into the military yoke.

Liberty of conscience is the most fundamental of all human rights, the pivot of all progress. No human being may be deprived of it without losing every vestige of freedom of thought and action. In these days when every principle and conception of democracy and individual liberty is being cast overboard under the pretext of democratizing Germany, it behooves every liberty loving man and woman to insist on his or her right of individual choice in the ordering of his life or action.

The NO-CONSCRIPTION LEAGUE has been formed for the purpose of encouraging conscientious objectors to affirm their liberty of conscience and to translate their objection to human slaughter by refusing to participate in the killing of their fellow men. The NO-CONSCRIPTION LEAGUE is to be the voice of protest against war and against the coercion of conscientious objectors to participate in the war. Our platform may be summarized as follows:

We oppose conscription because we are internationalists, anti-militarists, and opposed to all wars waged by capitalistic governments.

We will fight for what we choose to fight for: we will never fight simply because we are ordered to fight.

We believe that the militarization of America is an evil that far outweighs, in its anti-social and anti-libertarian effects, any good that may come from America's participation in the war.

We will resist conscription by every means in our power, and we will sustain those who, for similar reasons, refuse to be conscripted.

The first important public activity of the No-Conscription League took the form of a large mass-meeting on May 18th, attended by 8,000 people. The enthusiasm was so great that the uniformed patriots who came to break up the meeting, soon slunk courageously away. A Mothers' No-Conscription meeting has been arranged for June 4th. Besides, 100,000 No-Conscription manifestos have been circulated broadcast.

We are not unmindful of the difficulties in our way. But we have resolved to go ahead and spare no effort to make the voice of protest a moral force in the life of this country. The initial efforts of the conscientious objectors in England were fraught with many hardships and danger but finally the government of Great Britain was forced to give heed to the steadily increasing volume of public protest against the coercion of conscientious objectors. So we, too, in America will doubtless meet the full severity of the government and the condemnation of the patriotic jingoes, but we are nevertheless determined to go ahead. We feel confident in bringing out thousands of people who are conscientious objectors to the murder of their fellow men and to whom a principle represents the most vital thing in life.

Will you help us in this great undertaking? Will you enable us to carry on the fight? Send your contribution to me at once, to 20 E. 125th St., New York. Send for manifestos.

EMMA GOLDMAN.

* * *

THE TURNING OF THE TIDE

By S. W. Van Valkenburgh

Democracy! The rule of the ruled! O, how gullible, these sheep being fattened for the slaughter! Russia rises, as from a trance and proceeds to establish a semblance of popular government and bring the people back to the land—their own land—only to have this much heralded republic dispatch uninvited advisers, headed by that arch-American-autocrat, Elihu Root, to tell a people born and reared in revolution what they want and how to get it! Democracy! A country wherein the President has more absolute power bestowed him through the recent Congressional enactments than any other living ruler: a country where the conscientious objector has no legal status whatever; where the young men happening to marry after a given time are publicly branded as "traitors;" where one might not go to a theatre or other public place without having to prostrate one's self before the National emblem and to stand attention as the music peels off the squeaky National air: where one dare say nothing, do nothing and think nothing, unless it conforms to the hysteria of the times: where a victim of the patriotic mob is told by an unfeeling brute, called a judge, that if the mob had lynched him, he would have received his just deserts; where one's mail is now subject to the prying post-office pests whose arbitrary decisions as to what is "seditious and anarchistic" mean imprisonment of the alleged offender: in such a country, presuming to call itself free, and, not only tolerating such in-

famies, but continually adding to them, in such a country, the cry of Democracy were enough to make old Pericles awake and congratulate himself!

* * * * * *

(Back of Cover)

NO-CONSCRIPTION MASS MEETING
On the Eve of Registration
Monday, June 4, 8 P. M.
HUNT'S POINT PALACE
953 South Boulevard
One Block from Simpson Street Subway Station
All Bronx Cars Transfer
Auspices of

NO-CONSCRIPTION LEAGUE OF NEW YORK

Speakers: Emma Goldman; Alexander Berkman; Harry Weinberger; "Mother" Yuster; Mrs. Stella Comyn Ballantine; Mrs. Shapiro; Leonard D. Abbott; Kate Siebel; Rose Yuster; Robert H. Hutchinson; Louis Baury; Winter Russell; C. L. Fraina and others, among them young men of conscriptable age.

Doors open 7 P. M.

Admission Free Box Seats 25c

Mothers, Fathers, Sons—Turn Out in Protest Against Conscription!

YOUNG RUSSIA:—"What's the idea?"
YOUNG AMERICA:—"Democracy!"
YOUNG RUSSIA:—"Well, You know how I got mine."

GOLDMAN AND BERKMAN V. UNITED STATES.

Government's Exhibit 26.

THE BLAST

Vol. II. NEW YORK, JUNE 1, 1917 No. 5

The following are material extracts from this exhibit:

REGISTRATION

Registration is the first step of conscription.

The war shouters and their prostitute press, bent on snaring you into the army, tell you that registration has nothing to do with conscription.

They lie.

Without registration, conscription is impossible.

Conscription is the abdication of your rights as a citizen. Conscription is the cemetery where every vestige of your liberty is to be buried. Registration is its undertaker.

No man with red blood in his veins can be forced to fight against his will.

But you cannot successfully oppose conscription if you approve of, or submit to, registration.

Every beginning is hard. But if the government can induce you to register, it will have little difficulty in putting over conscription.

By registering you wilfully supply the government with the information it needs to make conscription effective.

Registration means placing in the hands of the authorities the despotic power of the machinery of passports which made darkest Russia what it was before the Revolution.

There are thousands, perhaps hundreds of thousands of young men in this country who have never voted and who have never paid taxes, and who, legally speaking, have no official existence. Their registration means nothing short of suicide, in a majority of cases.

Failure to register is punishable by imprisonment. Refusal to be conscripted may be punishable by death.

To register is to acknowledge the right of the government to conscript.

The consistent conscientious objector to human slaughter will neither register nor be conscripted.

Alexander Berkman.

* * * * * * *

WAR DICTIONARY

Alexander Berkman

Allies—The fairies of Democracy.

Barbarians—The other fellows.

Congress—The valet of Woodrow the First.

Censorship—The rape of Free Speech.

Conscription—Free men fighting against their will.

Civilization—In God We Trusts.

Democracy—The voice of the Gallery Gods.

Free Speech—Say what you please, but keep your mouth shut.

Huns—Loyal patriots from Central Europe.

Humanity—Treason to government.

Justice—Successful target shooting.

Loyal Citizen—Deaf, dumb and blind.

Kaiser—A President's ambition.

Liberty Loan—The bread line of the Unborn.

Liberty Bond—A bone from a bonehead.

Sedition—The proof of Tyranny.

Militarism—Christianity in action.

Patriotism—Hating your neighbor.

Registration—Funeral march of Liberty.

Slacker—Jesus Christ.

Trenches—Digging your own grave.

Un-American—Independent opinion.

Un-Democratic—Ideals.

Uniform—Government strait-jacket.

Victory—Ten million dead.

War—The propaganda of Democracy.

* * * * * * *

We are not pacifists. But we want to know what we are fighting for, and we refuse to fight for the enemies and the exploiters of humanity.

Government's Exhibits 27 and 28.

Receipts showing delivery by Buckley & Wood of bundles containing copies of *Mother Earth* and *The Blast* to 20 East 125th Street, New York City.

Government's Exhibit 29.

Copy of the June, 1917, issue of *Mother Earth* similar to Government's Exhibit 25, with the name "Hagerty" written in ink on the cover.

Government's Exhibit 30.

Stenographic notes by William H. Randolph of the speech by Emma Goldman at the meeting at Harlem River Casino, transcript of which notes is Government's Exhibit 31.

Government's Exhibit 31.

SPEECH BY EMMA GOLDMAN IN HARLEM RIVER CASINO, 127TH STREET,

9:45 P. M., May 18, 1917.

We don't believe in conscription, this meeting tonight being a living proof. This meeting was arranged with limited means. So, friends, we who have arranged the meeting are well satisfied if we

can only urge the people of entire New York City and America, there would be no war in the United States—there would be no conscription in the United States—(applause)—if the people are not given an opportunity to have their say. Therefore, we hope at least that a small portion of the population of New York City tonight is having its say.

Friends, what I have to tell you tonight I want to impress upon your minds with all the intensity of my being, that we have with us people who came to break up this meeting, and therefore, friends, I ask you, friends, in the name of peace, in the name of freedom, and all that is dear to you, to be perfectly quiet, and when the meeting is over to leave the hall quietly, for that is a better argument than by the provocators who came here tonight to break up the meeting. Therefore, friends, I repeat once more, that after our speakers will be through, I hope you will leave the hall quietly, and, if there is the slightest trouble, we will hold the trouble-makers, the provocators and the police responsible for the trouble (applause).

Friends, I know perfectly well that tomorrow morning the daily papers will say that the German Kaiser paid for this meeting. I know that they will say that those employed in the German service have arranged this meeting. But there is all of us, friends, who have something serious at hand—those of us to whom liberty is not a mere shadow—and found to be celebrated on the 4th of July, and to be celebrated with fire crackers—that we will not only speak for it, but die for it if necessary (applause).

We are concerned in our own conscience, and we know that the meeting tonight has been arranged by working men and working women, who probably gave their last cent from their wages which the capitalistic regime is granting them.

And so, friends, we do not care what people will say about us, we only care for one thing, and that

is to demonstrate tonight and to demonstrate as long as we can be able to speak, that when America went into war, ostensibly for the purpose of fighting for democracy—because it is a dastardly lie—it never went into war for democracy. If it is true that America went into war in order to fight for democracy—why not begin at home? We need democracy (applause). We need democracy even more than Germany, and I will tell you why. The German people were never brought up with the belief that they lived in democracy. The German people were nursed from their mothers' breasts that they were living in liberty and that they had all the freedom they desired. Therefore, the German people are not disappointed in the Kaiser. They have a Kaiser, the kind of a Kaiser they want and are going to stand for.

We in America have been brought up, we have been told that this is a free Republic. We have been told that free speech and free press and free assembly are guaranteed by the Constitution. Incidentally, friends, the only people who still believe in the Constitution are you poor fools for the other fellows (applause). We are rather disappointed. When suddenly, out of the clear sky, a few months after we have been told he kept us out of war—we are now told he drew us into war (applause).

We, who came from Europe, came here looking to America as the promised land. I came believing that liberty was a fact. And when we today resent war and resent conscription, it is not that we are foreigners and don't care, it is precisely because we love America and we are opposed to war (applause).

My friends, when I say we love America, I wish you to remember that we don't love the American Wall Street, that we don't love the American Morgan, that we don't love the American Rockefeller, we don't love the American Washington, we don't love the American ammunition manufacturers, we

don't love the American National Security League —for that America is Russia transferred to America (applause).

We mean the America of Wendell Phillips, we mean Emerson, we mean America of great pioneers of liberty. We mean writers, and great men and women, who have fought for years to maintain the standard of effort. I, for one, am quite willing to stand up face to face with patriots every night—patriots blind to the injustice committed in this country—patriots who didn't care a hang. We are willing to stand up and to say to them: "Keep your dirty hands off America." You have no right to tell the people to give their lives in behalf of democracy, when democracy is the laughing stock before all Europe. And therefore, friends, we stand here and we tell you that the war which is now declared by America in the last six weeks is not a war of democracy and is not a war of the urging of the people. It is not a war of economic independence. It is a war for conquest. It is a war for military power. It is a war for money. It is a war for the purpose of trampling under foot every vestige of liberty that you people have worked for, for the last forty or thirty or twenty-five years and, therefore, we refuse to support such a war (Hurray—applause).

We are told, friends, that the people want war. If it is true that the American people want war, why not give the American people a chance to say whether they want war. Friends, we were told that the American people have a chance to say whether they want war through Congress and through the Senate. Congress is in the hands of those who pull the string. It is a jumping jack (applause).

Friends, in Congress there are a few men in the Senate (mentioning some names) who wanted to keep America out of war. They have been hounded and persecuted and abused and insulted and degraded because they stood up for a principle. And

so it was not true that the people of America have a chance to express its views. It was impossible, because each Congressman and each Senator is taken into a private room where spiritualistic mediums are being used, and they are mesmerized and massaged until every revolutionary fibre is out of them, and then they come out and do as they're told by the administration in Washington.

The same is true about conscription. What chance have you men, to say, if you men are to be conscripted. It took England eighteen months—a monarchy—to decide whether she shall have conscription. Upon the people born under a free sky—conscription has been imposed upon you. You cannot have democracy and have compulsory military training. You have become Russia (applause).

Friends, I suggest that Wall Street and the military powers invite the Russian Czar to America—he belongs here—and tell them how to deal with the revolution, with the anti-militarists—the Czar ought to know, he handled them. He used every method in his power in order to subdue all human beings. But he succeeded—I should say not. He is now sitting in his palace, that the revolution may go a little further (applause). Americans evidently are working for the Czar. We already have the beginning of the Czar, who wants to employ all of the liberties of the American people.

Now, friends, do you suppose for one minute that this Government is big enough and strong enough and powerful enough to stop men who will not engage in the war because they don't want the war, because they don't believe in the war, because they are not going to fight a war for Mr. Morgan? What is the Government going to do with them? They're going to lock them up—You haven't prisons enough to lock up all the people (applause).

We believe in violence and we will use violence. Remember, friends, that the very Government which worships at the altar of the Christian religion, that

this very Government knows perfectly well, that they attempted to silence them. And so, if it is their intention to make us quiet, they may prepare the noose, they may prepare the gallows, they may build more prisons—for the spread of revolt and conscience (applause).

How many people are going to refuse to conscript, and I say there are enough. I would count at least 50,000, and there are enough to be more, and they're not going to when only they're conscripted. They will not register (applause).

I realize perfectly, that it is impossible to gather up 50 and 100 and 500 people—and what are you going to do if you have 500,000 people? It will not be such an easy job, and it will compel the Government to sit up and take notice and, therefore, we are going to support, with all the means at our support with money and publicity—we are going to support all the men who will refuse to register and who will refuse to fight (applause).

We want you to fill out these slips and as you go out drop them into the baskets at the door. We want to know how many men and women of conscriptive age—and they're going to take women and not soldiers. It is the same thing as if you fight in the war. Don't let them tell you that they will send you to the farm. Every stroke of what you do you are supporting the war, and the only reply that you can make against the war is that you are making men—that you are busy fighting your internal enemy, which is the capitalistic class (applause).

I hope that this meeting is not going to be the first and last. As a matter of fact, we are planning something else.

Friends, listen, think of it. Not only are you going to be compelled—coerced—to wear the soldier's uniform, but on the day when you leave to be educated to the monster war, on the day when it will be decided that you shall be driven into the

trenches and battlefield, on that day we are going to have a demonstration (applause), but be careful whom (applause)—you might bury yourself and not the working class (applause). We will have a demonstration of all the people who will not be conscripted and who will not register. We are going to have the largest demonstration this city has ever seen, and no power on earth will stop us.

I will say, in conclusion, that I, for one, am quite willing to take the consequences of every word I said and am going to say on the stand I am taking. I am not afraid of prison—I have been there often. It isn't quite so bad. I am not afraid of the authorities—I have dealt with them before—and rather, they have dealt with me, and am still living and stand here before you. I am not afraid of death. I would rather die the death of a lion than live the life of a dog (applause).

For the cause of human liberty, for the cause of the working class, for the cause of men and women who live and till the soil—if I am to die for them, I could not wish a more glorious death ever in my wildest dreams. And so, patriots, and police, and gentlemen, who represent wealth and power, help yourself—you cannot stop the revolutionary spirit. It may take as long as one year or two. You cannot do it, because the spirit of revolution has a marvelous power of liberty.. It can break through bars—it can go through safely. It can come out stronger and braver. If there is any man in this hall that despairs—let's look across Russia—let's look across (applause). Als—who was tortured by the Russian soldiers, who never believed that she would see Russia and see her people alive, and yet see the wonderful thing that revolution has done. It has thrown the Czar and his clique and his ever staunch henchmen into prison. It has opened Siberia and all the dungeons, and the men and women are going to be free. They are not go-

ing to be free according to American democracy (applause).

Friends, I insist it is a good place for them in Russia. Let's go back home tomorrow. So, friends, don't be afraid. Take this marvelous meeting, take this wonderful spirit, and remember that you are not alone—that tonight, in every city, in every hamlet and in every village and town, there are hearts beating that they don't want war, that they don't want conscription—that they are not going to be conscripted.

The ruling classes fight a losing game. The Wall Street men are fighting a losing game. They represented the past and we represent the future (applause).

The future belongs to the young men, who are barely of age and barely realizing their freedom. The future belongs to the young girls and young boys. They must be free from militarism. They must be free from the military yoke. If you want war, help yourself. Fight your own battle. We are not going to fight it for you (applause).

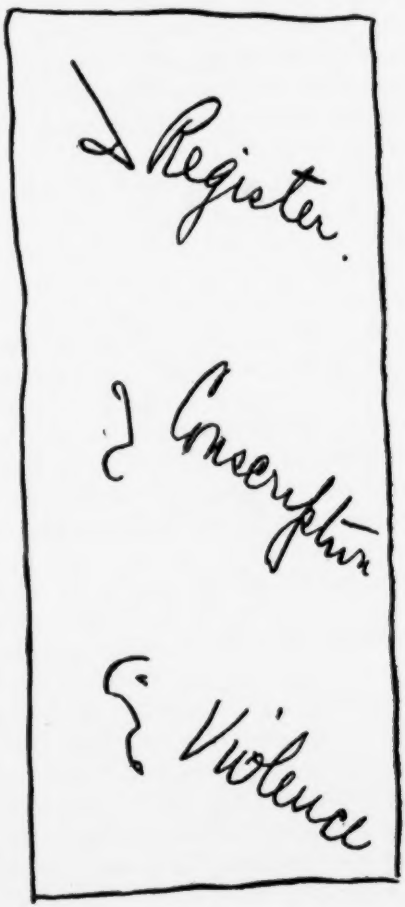
So, friends, it is our decision tonight. We are going to fight for you, we are going to assist you and co-operate with you, and have the grandest demonstration this country has ever seen against militarism and war. What's your answer? Your answer to war must be a general strike, and then the governing class will have something on its hands.

So, friends, before I close, I want to make an appeal to you. I want to make you know that this meeting sprang simultaneously from a group of people. It cost money and therefore I ask you to contribute as much as you can. I wish to say that Mother Earth is opening pledges with $50. I hope that those who can do so will do so. We want to have money, we want to have more literature, we want to have a demonstration, and we want to

prove that with little money, no public support, with no militia, with no soldiers, we can support the point of real freedom and liberty and brotherhood.

(Finished speaking about 10:15 P. M.)

Government's Exhibit 32.



Government's Exhibit 33.

STENOGRAPHER'S MINUTES

MEETING OF
NO CONSCRIPTION LEAGUE
HUNTS POINT PALACE
NEW YORK, JUNE 4TH, 1917.

STENOGRAPHY SERVICE CO.

Downtown: 55 Liberty Street (Liberty Tower)
Uptown: 47 West 42nd Street, corner 6th Avenue
New York

* * * * * *

MR. ALEXANDER BERKMAN: Comrades, friends and enemies (Great Applause) and everyone who believes in freedom of thought and liberty. We had a demonstration here a moment ago as to who believes in free speech. The militarists, the false patriots and the others have mass meetings tonight. They have mass meetings this evening. They have meetings tomorrow. We did not send our men to disturb their meetings. (Great applause and hurrahs.) And who believe in liberty? Do we believe in liberty or do they? We say to you, and I mean all of you, I mean these detectives, these Federal men, soldiers and sailors, we say to all of you, if you want war, go ahead. We believe in liberty, but you can go ahead. (Applause and cheers.) But we say further to you, if you believe in liberty, if you pretend to fight for liberty and democracy how can you force us to do what we don't want to do? (Great applause and cheering). I see a few, or rather quite a number of young men in uniform in this audience, and I want to know when they look into their own consciences if they do not think that I am not making a speech, but I am talking common sense. That should appeal to you, if you really have a sense of justice. America says we

are going to fight Germany. Why? They say we are going to fight Germany because we want to give them liberty and democracy. If you believe that you can give a people liberty and democracy from the outside, if you believe you can give a people or a nation liberty at the end of a bayonet or with bullets, go ahead. We don't object. We shall not interfere. But if you are so generous with liberty as to carry it to Germany across the sea, why don't you retail liberty right here in this country. (Applause.)

A Voice: Are you a citizen?

Mr. Berkman: I have the floor just now. If you want the floor later, we believe in free speech and will give it to you. There is no greater boon in the world than liberty. There is nothing greater in the whole universe than freedom of conscience, freedom of opinion and freedom of action, in short liberty. But it is we who are fighting for liberty, and no one else, not those who oppose us. We have been fighting for liberty for many years, and even for the liberty of those who oppose us. (Great Applause.)

A Voice: You know what Rabbi Wise said?

Other Voices: Shut up, shut up.

(There were many boos and great confusion. Someone threw something at the speaker.)

Mr. Berkman: I want this man to speak out what is in his heart. That is all right. I say this is a solemn moment. Men and women and soldiers and others, do not make light of this. You are the sons of mothers, even if you are in uniform. You want to go to the front. All right. But consider what you are doing and consider whether you have the right to suppress those who do not believe as you do. Consider well, especially if you pretend to fight under the banner of free speech and liberty. Consider that. Take that home with you to your barracks. Think it over. You have never heard patriots talk to us like that. We talk to you like

that. We don't throw glasses or bricks at you. We say to you consider, look into your own hearts and do what you think is right. But you can't think it is right to suppress the other fellow because he thinks differently. You can't believe it in your own hearts or you would have less to say in opposition to us, and you would be less, much less than human. We are here to say what we believe, just the same as you are in a hundred and one halls all over the City, in thousands of halls all over the country today to say what you believe. That means liberty of speech, and for liberty I am the first to fight. (Great applause.)

This is a most serious moment. Let me tell you, if you know what is happening in the country today, that you know that this is one of the most tragic moments in the life of this country. Don't make light of it, because it is the most terrible and tragic moment in the life of the country. Conscription in a free country means the cemetery of liberty, and if conscription is the cemetery then registration is the undertaker. (Great applause and cheers and boos, and something thrown at the speaker that looked like a lemon.)

All right, I am talking now; you can talk later. (Some one in the gallery threw something at the speaker and said something the stenographer could not understand.) Those who want to register should certainly register, but those who know what liberty means, and I am sure there are thousands in this country, they will not register. (Many hurrahs and great applause.) There have been many black days, many black Fridays, and black Sundays in the history of this country. Black days for labor when those who feed you were shot down on the streets because they were for better conditions of living. There have been many black days for labor. But there is going to be a blacker day, not a black Friday, but a black Tuesday. (Great applause.) And I believe that those who realize the full sig-

nificance of forcing a supposedly free country into an armed camp, those who realize that should put on mourning tomorrow. They should mourn the loss of the country's liberty. It is not a day for rejoicing. You rejoice over something that brings you happiness, joy, freedom. But something that means your further enslavement, something that means the coercion of you to do things against your conscience, against your nature, against the dictates of everything that is fine in you—things like that should be mourned and wept over, and not made a holiday of. It is a tragic moment to me, because I love the American people more than those who want to enslave them towards the profit of Morgan and others. (Applause.)

Neither the soldiers of this country nor the workers have any enemies across the ocean. The soldiers and the workers and all those who really have to work mentally or physically, for their bread and butter, they have no enemies there. They have an enemy right here in this country; (Applause) they have an enemy that makes money, millions and millions of it, out of your blood, out of small children and widows, by putting them in sweat shops, by working them all hours, (Great Applause) (Some one in the gallery threw something at the speaker which broke the glass on the table in front of him and the rest of the remarks to finish the sentence were not heard.) Those are the enemies we have.

A Voice: You are the enemy.

Mr. Berkman: I have no more love for these exploiting American enemies than I have for the German Kaiser. (Some one in the gallery shouted, "go back to Europe where you belong. You are not an American citizen anyhow." Also some one threw something that broke one of the electric globes in the footlight row.)

Mr. Berkman: No, no, gracia. Hence, consider a certain country across the ocean. Look at Rus-

sia. There are workers and soldiers that know what they are about. (Great applause and confusion. Many voices from the gallery.) You believe in free speech, go and fight for your country. They are soldiers the same as we have in this country. They are workers the same as we have in this country. And let me tell you they know that eight hours is a working day there. (There was considerable confusion in the gallery, and evidently a struggle of some sort went on up there.)

No argument there (Referring to the gallery.) Sit down. Everybody keep their seats. (There was great confusion, People standing up around the hall.) Keep your seats. We know there are men here to break up this meeting.

Emma Goldman: One moment. There are United States soldiers here who are on duty. Soldiers—now, no argument there.

Mr. Kane: Listen to an American citizen.

(Meanwhile there was great confusion throughout the hall.)

Mr. Berkman: I don't believe these soldiers are real Americans. My friends, do you know what is happening in Russia today? Do you know that eight hours work is what the workers want in every country? Do you know what is good for the workers? Do you know what the soldiers of Russia are helping the workers in that country to do? Do you know that after all the cause of the soldiers and workers is the same everywhere. (Great excitement and Miss Goldman assumes charge.)

Miss Emma Goldman: Please be quiet; please be quiet. (Great applause and cheers.) Friends and fellows workers. Friends, don't you know that the soldiers came here to disturb the meeting? (Many voices yes, yes.) I ask you all to keep quiet, no matter what the soldiers do. I demand of you to keep absolutely quiet. Let them disturb the meeting. We are not going to disturb the meeting. (Applause)

Friends, workers, soldiers, detectives and police. (Laughter and hisses and applause) I am going to speak to you all. I am surprised that the police here don't stop the soldiers from breaking the lights. (Hurrahs and applause. Throughout Emma Goldman's remarks she was so frequently interrupted by applause that reference will not be made to the times.) Friends, please don't applaud, time is too precious. If the police don't stop the soldiers from breaking the law is it because the police are afraid of the soldiers? I hope that they will preserve order. Now, friends, if this meeting would not take place at all, I think you should know that there are twenty thousand people outside waiting to get into this hall, to prove to you more than anything that we can say that the people of New York who think, don't want war and don't want conscription and don't want militarism. At the same time we consider ourselves more consistent than those who believe in war and believe in militarism. We say that those who believe in war, believe in conscription and in militarism and should do their duty and fight. We have no objection against it, but we refuse to be compelled to fight when we don't believe in war and when we don't believe in militarism and when we don't believe in conscription. Now, why don't we believe in war and in militarism? The good papers of this city have told you that because we are pro-Germans we do not believe in war and we do not believe in militarism. That is an unbelievable lie. I am just as much opposed to the German Government as I am to the American Government —and why do I not believe in militarism? I will tell you why. When I was eight years of age my father had a government position, and every year compulsory military registration was required. The highest officials of Russia would come to our place, the heads, the representatives of militarism, and would there compel the youth of our land, the peasant boys to become soldiers. And at that time

the mothers and the fathers of the whole community turned out in mourning and considered it a day of sorrow and of tears and of pain when their sons were taken away into the Army. It impressed itself with indelible power upon my mind and upon my conscience. Ten years later, when I came to America, I was told that this was the land of the free, that no man is compelled to be a soldier in America. I actually believed that this was the promised land, the land that rests upon freedom, upon opportunity, upon happiness, upon recognition of the importance and the value of the young generation. But since that day twenty seven years almost have passed, and I have come to the conclusion that when the law for conscription was passed in the United States the Funeral March of 500,000 American youths is going to be celebrated tomorrow, on Registration Day. I am opposed to Militarism because I have seen since my early childhood what it means to sacrifice a young man, who has hope and youth and a life of opportunity before him, on the altar of militarism. I, therefore, promised myself, even as a child, that as long as I lived, and as long as my voice carried, I shall cry out against compulsory militarism, against conscription. My friends, we are told that the people want war. If the people of America want war, if the people of New York City want conscription, how does it happen that this city is going to muster up not only the entire police department, but the National Guard and a body of parasites known as the Home Guards, who have nothing else to do? Now, my friends, I ask you why do you have to muster up your police, soldiers, Home Guards and National Guard to celebrate your Registration Day? If the people want war, why so much police, why so many soldiers to compel them to become soldiers? If the people want war, why not give them a chance to say that they do? If you want to sacrifice their sons upon the altar of militarism, why not give the people a

chance to decide? Those in power knew that they could not put the people to a test; they were afraid to put the America people to a test, and that is why they imposed war upon them, and barely six weeks later imposed conscription upon them. Therefore, I as an Anarchist who became an American out of choice protest. You patriots, you born Americans, you became Americans because you had to. You were dropped on this earth. I had no choice whatever, but I came to America out of my free will, and I, as an American out of choice, say that if you force people into militarism, if you force our young men into the Army, please have the decency to say that you will Prussianize America in order to democratize Germany. (Tremendous applause). You must realize that you will be making a laughing stock out of yourselves. Nobody believes you. Don't you suppose that the fact that you are breaking up meetings and causing disturbances and locking up boys and girls and disturbing and harming people, don't you suppose those things are known abroad? How much the Russian peasants and the workingmen must enjoy themselves when they hear of this wonderful democracy in the United States.

I understand, friends, that a meeting of Russian soldiers was stopped in this city tonight. I am glad of it. The Russian soldiers will go back to the Council of Workmen and Soldiers and they will tell them that when America says she is fighting for democracy she is telling the world a lie. She is not fighting for democracy. I say that those who sit in a glass house have no right to throw stones about them. Now, friends, I am here frankly and openly telling you that I will continue to work against Conscription. We are told that you have stenographers here to take down what we say, this is not the first time we are having stenographers at our meeting. And I have always said things that everybody can hear, and what is more important

I want the police and the soldiers to hear what I have to say. It will do them good. They need education. Now, friends, if I do not tell you tonight not to register, it is not because I am afraid of the soldiers, or because I am afraid of the police. I have only one life to give, and if my life is to be given for an ideal, for the liberation of the people, soldiers, help yourselves. My friends, the only reason that prevents me telling you men of conscriptable age not to register is because I am an Anarchist, and I do not believe in force morally or otherwise to induce you to do anything that is against your conscience, and that is why I tell you to use your own judgment and rely upon your own conscience. It is the best guide in all the world. If that is a crime, if that is treason, I am willing to be shot. It is a wonderful death to die for your ideal, but I impress it upon the minds of patriots present, I impress it upon the minds of the police present, upon the minds of the soldiers present, that for every idealist they kill thousands will rise and they will not cease to rise until the same thing happens in America that has happened in Russia. Don't you know, friends, that there was a time when Russian soldiers locked up every idealist and sent them to Siberia and to underground prisons and suppressed free speech and assembly and tortured them to death. Yet today the whole civilized world, including the United States Government, is trembling in its boots before The Council of Workmen and Soldiers who are standing for liberty. And, friends, young men, soldiers, I am not afraid. I am not afraid for all you can do is to take my life—you can never take my ideals. Neither the police nor the soldiers, nor the United States Government nor all the powers on earth will take my ideals. My ideals will live long after I am dead.

Now, friends, I come to something else far remote from what I have to say tonight, and which is unfortunately always my luck. The newspapers

were good enough to say that all of our meetings are paid for by the German Kaiser. Of course, they know better. They know that if the German Kaiser paid for this meeting, we could have the largest hall in town and invite the police. They know perfectly well that we are not paid by the German Kaiser. No, friends, you workingmen and working women, who are here tonight, you have to pay for tonight's meeting, not the German Kaiser. I am going to appeal to you,—because this meeting has to be paid for by your money, and in the second place, to demonstrate to the gentlemen of the press, present here tonight, to the soldiers and to the police, and to the detectives, that the money which you are going to give is hard earned American pennies, the amount of money your masters are good enough to give you in return for the amount of wealth which you are producing every day. And so, friends, I appeal to you tonight to give liberally, to give as much as you can, when the collectors go through to pay the expense of the meeting. We are very fortunate that we don't have to pay for our protection. We get that perfectly free. We are very grateful that the soldiers are present tonight. It is the only time in our life and their lives that they have heard the truth, and I am glad they are here, and so friends, when the collectors pass, please give as generously and as liberally as you can, and give only if you are opposed to war, and if you are opposed to militarism and conscription. I shall then have a word or two to say after the collection is over.

Meanwhile I call the attention of you soldiers to the fact that if you wish to demonstrate that you believe in American Institutions you will behave yourselves like gentlemen, not like ruffians. (There was considerable confusion throughout the hall and up in the gallery.) Now, after the collection, I shall have a few closing remarks to make, and I am going to stand here until you are through with the

collection. (Some one asked for three cheers for Emma Goldman, and the response was tremendous. Cheers and applause, mingled with boos and also some cheers for Alexander Berkman.) Friends, don't please make a mistake. Don't shout hurrah for Emma Goldman or Alexander Berkman, because they are mere incidents in the history of the world. It is better to shout hurrah for the principles of liberty. That is better than one Alexander Berkman or one Emma Goldman, or one hundred thousand Alexander Berkmans and Emma Goldmans. They will go, but the principle of freedom, the principle of self possession, the principle of self emancipation, the principle of social revolution will live.

Friends, the collectors can go on quietly and continue their work. (There was great confusion throughout the hall at the time and Miss Goldman quieted the audience. Every one became quiet again.) Don't forget friends, that the opposition to conscription only begins, it does not end tonight. Do not forget, also, that the work for Peace, for International Peace only begins. I know, friends, who are here tonight, that you will be glad to learn from the note just sent up that fully twenty thousand people are outside of the hall. Dear Friends, I congratulate the press of New York. The press of New York. The newspapers of New York have rendered our Anti Conscription work more service than a thousand Emma Goldmans could render. Of course, the press did not desire to have twenty thousand people at such a meeting. What the press wanted was merely to paralyze you into silence, to make you believe that you are going to be imprisoned for this and be shot on the spot. It is too bad that America cannot hang you and quarter you and shoot you all at once, for the press would be in favor of that. These blood curdling articles that appear are only for the purpose of paralyzing you. They don't know, the poor chaps, that if anyone

has an idea you can't terrorize him no matter what you do. So I am personally grateful to you—to the press. I am grateful to the police for having sent out so numerous an army, grateful to the young soldiers who really mean no harm. The are innocent boys. They have never yet faced danger. They think it is going to be a picnic; they think they are going to enjoy themselves, poor young gentlemen. I wish you could go to war and have a picnic. I wish you could enjoy yourselves, and I wish you could carry on your war as if it were a frolic, or as if it were a baseball or football game, but you are mistaken, as war means an entirely different thing. We know that war means the annihilation of every fundamental principle of liberty. We know that centralized militarism means nothing else but the carnal brutality of men, blood-shed and conquest in its most abominable aspect. We tonight of the Anti Conscription League raise our voices to the very sky to tell you that you may fight your battles, if you believe in the trenches, but you are representing a losing cause. You represent the past and we represent the future. The Conscription Law has been the means of awakening the people of America. Before the Conscription Law was passed the American people used to think, why, we have freedom, we can do whatever we please, we can go to war if we want to and stay away if we don't want to. My friends, we are grateful to the Government for having passed the Conscription Biil for it will teach the American people that American Liberty has been buried and is dead and is a corpse, and that only our voice is going to raise it up and revive it again, until the American people and all the people living in America will unite in one great mass and will throw out capitalism and Government by militarism.

It was our intention to have a number of other speakers here tonight. They are all here. I don't want you to think for a moment that anyone backed

out, but we are not going to give the satisfaction to the patriots to break up this meeting. Therefore, friends, I want you to close this meeting with the singing of the International and to go out quietly. Your friends on the outside are waiting, and you will all raise one mighty voice that is going to drown militarism and government and capitalism. (At the close of the meeting an old lady was helped to the platform by some one on the platform and distributed some papers, taken from an envelope. The pamphlets were afterward taken up by the soldiers and the old lady was arrested.)

MEETING CLOSED.

Government's Exhibit 34.

This is a copy of the June, 1917, issue of *Mother Earth* similar to Government's Exhibit 25, with the following written on the back cover:

"Identified by Emma Goldman as her publication June 15, 1917. G. D. Barnitz."

Government's Exhibit 35.

(Letterhead of No-Conscription League.)

June 8, 1917.

Mr. H. A. Content
U. S. Assistant District Attorney
Post Office Bldg.
New York City.

Dear Sir:—

We understand that Morris Becker and Louis Kramer are held on the charge of distributing handbills announcing the No-Conscription Massmeeting of June 4th. We do not know whether the men

mentioned actually gave out the handbills or not, but even supposing that they did, we consider their arrest and prosecution an unmitigated outrage, in view of the fact that the authorities permitted the meeting to take place and that it was attended by yourself and staff, and that you took no action either to stop the meeting or to arrest the speakers for anything said there. In other words, from your own point of view the gathering must have been a perfectly legal affair. Otherwise you were in duty bound to take measures to prevent or stop the same.

Considering these facts, it is nothing short of preposterous to prosecute any one for the distribution of handbills announcing a perfectly legal meeting.

The real reason for the prosecution, therefore, seems to be the fact that the two boys in question have declared themselves to be Anarchists and members of the NO-CONSCRIPTION LEAGUE. In other words, they are being prosecuted for holding certain social and political opinions. Since when, may we ask, is the mere holding of an opinion a crime in these free United States?

Anarchism stands for individual liberty and social wellbeing. It is opposed to personal invasion as well as to the organized form of violence known as government. If the belief in Anarchism or the holding of the opinions represented by the NO-CONSCRIPTION LEAGUE (the principles of which you will find clearly stated on our letter-head) is a crime, then why are only unknown boys like Kramer and Becker prosecuted and not the more prominent men and women guilty of a similar "crime"? We hereby state in the most emphatic manner that we, the undersigned, are Anarchists and firm believers in the principles enunciated by the NO-CONSCRIPTION LEAGUE.

If the spirit of justice and fair play is the least factor in your activities as federal prosecutor, then we call upon you for the immediate release of Beck-

er and Kramer and the others charged with the "crime" of holding unpopular political and social opinions.

Yours for the day when there shall be justice, liberty and true democracy in America.

ALEXANDER BERKMAN
EMMA GOLDMAN
(On back)

June 15-17.

This paper was shown by me to Emma Goldman and Alex. Berkman at 20 East 125 St. and both identified it as having been the one they sent to Mr. Content and both admitted that they were responsible for what was in the letter.

GEO. D. BARNITZ.

Government's Exhibit 35-A.

No-Conscription League 20 East 125th Street New York	Postmarked New York, N.Y. Jun 9 7 AM 1917 Sta. D	Canceled Stamp

MR. H. A. CONTENT
U. S. Assistant District Attorney
Post Office Bldg.
New York City

Government's Exhibit 36.

This is a copy of the June, 1917, issue of *The Blast* similar to Government's Exhibit 26, with the following written on it:

"Identified by Alexander Berkman as his publication June 15, 1917. G. D. Barnitz."

Government's Exhibit 37.

Large bundle containing magazines similar to Government's Exhibit 25.

Government's Exhibit 38.

Bundle containing form letters similar to Government's Exhibits 4, 5 and 6.

Government's Exhibit 39.

Bundle of addressed envelopes with enclosures similar to Government's Exhibits 7-A, 7-B and 7-C, some signed by Emma Goldman and others by Alexander Berkman.

Government's Exhibit 41.

Bundle containing copies of *The Blast* similar to Government's Exhibit 26.

Government's Exhibit 43.

LABOR AND WAR

WORKERS, MEN AND WOMEN! The State Military Census is a trap to catch you in the bloody noose of militarism. The State Registration is to force men and women, aye, children 16 years of age, to become cogs in the machine of human slaughter.

The boys over 18 years of age, and the men till the age of 45, will automatically become members of the State Militia. They will be drafted into the National Guard, to be called to war or to do the dirty work of the bosses in time of strikes.

Men, if you have a spark of self-respect in your hearts, will you become the murderers of your brothers? Will you be enrolled in the Militia, the Militia whose hands are dripping with the blood of strikers who had asked for better conditions of living?

Men, will you let the bosses drive you to slaughter? Women, will you help save your husbands, brothers and sons? The State Military Census will turn the gun of son against father, of brother against brother. Workers in military uniform will be forced to shoot down their fellow workers when they go out on strike. Your unions will be broken up, and the bosses will have a free hand with you, to do as they please. They will make you work long hours for pitiful starvation wages, under the excuse of military necessity. All the advantages that you have gained by long years of hard struggle will be swept away over night and you will not be able to protest or to resist, because the State Military Census enrolls every man in the militia, and you will find yourself under martial law if you dare to object to the oppression of the masters.

Now is the time to protest. Later it will be too late. If hundreds of thousands of you raise your voice NOW, you will force the government to listen to you, and they will know that you have the courage of manhood and womanhood, and that you cannot be treated as the Czar used to treat his submissive subjects. The people of Russia, your own brothers and sisters, brought the mighty Czar off his high throne. Are you going to submit to Czarism in America?

Brothers, Sisters, Men and Women, come to the great

DEMONSTRATION

MADISON SQUARE
23rd Street and Madison Avenue
Saturday, June 23rd, 2 P. M.

Speakers in all Languages

Among them Emma Goldman; Alexander Berkman; Leonard D. Abbott; Louis C. Fraina; Alex Cohen; L. Baury; Pietro Allegra and others.

Auspices
Friends of American Freedom

Men who have not registered on June 5th should stay away

Government's Exhibit 45.

This is a carbon copy of Government's Exhibit 45-A.

Government's Exhibit 45-A.

Great Open Air
DEMONSTRATION
To Discuss
STATE MILITARY CENSUS
Madison Square
23d St. and Madison Ave.
Saturday, June 16, 2 P. M

Speakers:
Emma Goldman
Alexander Berkman
Leonard D. Abbott
Alex Cohen
Pietro Allegra
S. Barnard and others

Auspices Friends of American Freedom
Young men who did not register June 5th should stay away

Government's Exhibit 49.

This is a bundle of copies of *Mother Earth* (Government's Exhibit 25).

Government's Exhibit 50.

This is a bundle of form letters similar to Government's Exhibits 4, 5 and 6.

Government's Exhibit 51.

This is a bundle of subscription blanks similar to Government's Exhibit 8-C.

Government's Exhibit 52.

This is a bundle of hand bills similar to Government's Exhibit 43.

Government's Exhibit 53.

This is a bundle containing copies of Government's Exhibit 1.

Government's Exhibit 55.

Issue of *Mother Earth,* Vol. IX, July, 1914, No. 5. On the cover appears a cut of a monument on which is written "Killed July 4, 1914, Caron, Hanson, Berg."

On the inside of cover appears the following:

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EMMA GOLDMAN - - - - - Publisher
ALEXANDER BERKMAN - - - - Editor

Office: 74 West 119th Street, New York City

Telephone, Harlem 6194

Price 10 Cents per Copy One Dollar per Year

The following are the material extracts from the issue:

ALEXANDER BERKMAN'S OPENING ADDRESS.

Comrades, Friends and Sympathizers: We have come here this afternoon, not to mourn any calamity, but to pay our homage to three comrades whom we consider martyrs to the cause of humanity. This is not an occasion for mourning. Indeed, quite the contrary is perhaps the case, because our comrades may have proved—for all we know—that there are still men in the labor movement who will not stand quietly by when they themselves or other workers are persecuted, oppressed and maltreated. We hold that our Comrades Arthur Caron, Charles Berg and Carl Hanson died either martyrs to the cause of labor, or victims of the capitalist class.

What were the circumstances under which our three comrades met their tragic deaths? Two possibilities there are. One of them is that our friends were directly murdered by the enemy, perhaps by agents of the Rockefellers. I should not in the least be surprised if that is so, because the Rocke-

fellers have committed many murders; they would not stop at anything to add a few more coldblooded crimes to the long list of which they are guilty. And if our comrades have died as a result of the hatred of the capitalist class, then I say that they were indeed martyrs to the cause of labor, for they were murdered because of their loyalty, their devotion and effective work in behalf of the working class of this country.

There is another possibility, and that is that our friends had themselves prepared the infernal machine, bomb, or whatever it was. And, of course, if that is the case, then I am quite sure that they did so with the intention of using it upon the enemy. The facts so far do not prove either the one supposition or the other; but if the latter be correct, then their death as a result of a perhaps premature explosion lies at the door of that iniquitous social system of capitalism which had brought our comrades to the point where persecution, tyranny and oppression drove them to the climax of resisting by the might of dynamite. If society has forced our friends to resist oppression with violence, then capitalist society is guilty of creating the spirit which can find expression only in such violent methods. Therefore, whatever the actual facts, our comrades are either victims of capitalism or they are martyrs to the cause of labor and of humanity in general.

I want to go on record here to-day as saying that I prefer to believe that our comrades were not victims, in the sense of l ving been killed as the result of a conspiracy of the enemy. I want to go on record as saying that I hope our comrades had themselves prepared the bomb, intending to use it upon the enemy. Why do I say this? Because I believe, and firmly believe, that the oppression of labor in this country, the persecution of the radical elements especially, has reached a point where nothing but determined resistance will do any good

And I believe with all my heart in resistance to tyranny on every and all occasions. It was a great American who said that the tree of liberty must be watered now and then by the blood of tyrants. That holds good to-day as it did a hundred years ago. When workers are shot down for demanding better conditions of living, when their women and children are slaughtered and burned alive, then I say that it is time for labor to quit talking and to begin to act.

My sentiments in regard to labor at large and the methods that the workers must pursue to achieve final emancipation, apply also to the occasions of everyday life. Pertaining to this particular occasion, I want to say that since the authorities have suppressed our funeral procession, by which we intended in a dignified manner to pay honor to our dead, the question naturally arises why we did not resist that suppression, why we did not parade in spite of the prohibition of the authorities. I am going to tell you why, and I want to be quite frank with you and speak to you from my heart as man to man. I am going to say on this public platform just what I would say in private. And that is this: as soon as we are ready to resist oppression and invasion on the part of the police, just so soon we will do it. If we don't resist them with our full might on this occasion it is because, first, we consider this monster memorial demonstration far more important than any funeral procession, and secondly, because we don't intend to do the things which the police expect us to do or when they expect us to do them. We are always ready to stand up for our principles and ideas, to fight for them to the very limit of our possibilities, and to pay with our lives, if necessary, in order to assert the rights of the individual and the rights of the working class of this country. If we have abandoned the procession, it was only because we yielded, for the present, to

superior physical force on the part of the enemy. But we do not mean to yield all the time.

We hold that labor in this country has been degraded to the point where the average workingman is a mere wage-slave, with no rights and no opportunities, and that his only chance of defending himself against the aggression of his exploiters and against the tyranny of the State and National governments lies in his determination to fight, in his consciousness of his economic strength, and in his power to organize a tremendous movement whose slogan will be direct action, with its final purpose, the general strike. And while we are advancing toward this most desired culmination, while we are approaching the Social Revolution, there will always be individuals, more intelligent, more determined and daring than the rest, eager to pave the way by acts of individual devotion and sacrifice. Therefore I say that there is that second possibility, that our Comrades Arthur Caron, Charles Berg and Carl Hanson were such devoted and brave individuals out of the large mass who were determined to show an example to labor by resisting to the full extent of their ability the exploitation, the oppression and the persecution of the capitalist class. As such I acclaim them the conscious, brave and determined spokesmen of the working class, and I call upon you, friends and fellow-workers, for three cheers for our dead comrades.

* * * * * *

EMMA GOLDMAN'S TELEGRAM.

During the course of the afternoon a telegram was received from San Francisco from Emma Goldman and Ben Reitman. It read as follows:

"Our deepest sympathy with all oppressed of the world, of whom our dead comrades were the conscious and brave spokesmen. We honor the memory of our dead comrades, the victims

of the capitalist system and the martyrs of labor."

EMMA GOLDMAN,
DR. BEN REITMAN.

* * * * * *

A GAUGE OF CHANGE.

By Alexander Berkman.

Not since the Haymarket affair of 1886 has any Anarchist event aroused this country as did the Lexington explosion.

The Haymarket bomb was followed by a terrible wave of the mob spirit; no Anarchist was safe from the blind fury of the murderous law-and-order hordes, in and out of uniform.

What a difference after the Lexington Avenue explosion! The Anarchists boldly hail the victims of the tragedy as comrades and martyrs, and an audience of twenty thousand pays respect to our dead and applauds our utterances.

Nor does it make any difference in what manner Comrades Caron, Berg and Hanson met their tragic death, or what the true explanation of the explosion in their flat. I have publicly said in Union Square that I hoped that our comrades were not the victims of the enemy's conspiracy, but that they had planned to employ dynamite either in revenge for wrongs suffered or in the defense of the rights of themselves and their fellow-workers, of labor at large. And the monster mass-meeting enthusiastically echoed my expressed hope.

What a wonderful change in public sentiment!

Do you still ask me what the Anarchists have accomplished in the last quarter of a century? Just this: They have taught the people that violence is justified, aye, necessary in the defensive and offensive struggle of labor against capital. They have freed the public mind, to a remarkable extent, from the superstition of bourgeois morality, as is

evident from the Union Square demonstration and from the numerous expressions of sympathy and encouragement we are receiving from heretofore indifferent if not unsympathetic sources. They have taught the country that there is a class war, a war to the knife between labor and capital, and that all and every means are justified in the defense and offense of labor against its Ludlow masters. Nay, more; they forced the beast of law to draw back its claws at the sight of the bold frankness and determined attitude of its intended prey. The enemy has been taught to respect the power of our ideal backed by the willingness and determination to fight—to fight to the death, if need be, with the minority weapon more effective in the hands of an individual than is a whole company of hired thugs.

Never before have we witnessed in this country a similar situation. Times have indeed changed! Let us be frank about it. The struggle of labor against capital, the war of the new against the old, will terminate quicker, more humanely in the long run, by facing the issue squarely. Power, strength —that alone counts in this war. The power of the economic solidarity of labor will ultimately knock the last master off the back of the last slave, and meanwhile—while labor gathers this power, its success will be hastened, its courage strengthened by tempering oppression with dynamite.

Government's Exhibit 56.

A wooden box and three suit cases containing copies of the June issue of *Mother Earth*, a copy of which is Exhibit 25, all in wrappers ready for mailing.

Government's Exhibit 57.

A specimen of Emma Goldman's handwriting.

Government's Exhibit 61.

Stenographic notes, taken by Caddell, of a speech by Emma Goldman, at Harlem River Casino, on May 18, 1917.

Government's Exhibit 62.

Transcript of Exhibit 61 which is similar to Exhibit 31 with the exception of the insertion of a few proper names omitted in Exhibit 31.

Defendants' Exhibit A.

Cancelled check of James Hollbeck for $3,000, read into record.

Defendants' Exhibit B.

PREPAREDNESS: THE ROAD TO UNIVERSAL SLAUGHTER.

With the cunning methods used by the scheming diplomats and military cliques of Germany to saddle the masses with Prussian militarism, the American military ring with its Roosevelts, its Garrisons, its Daniels, and lastly its Wilsons, are moving the very heavens to place the militaristic heel upon the necks of the American people, and, if suc-

cessful, will hurl America into the storm of blood and tears now devastating the countries of Europe.

Forty years ago Germany proclaimed the slogan: "Germany above everything. Germany for the Germans, first, last and always. We want peace; therefore we must prepare for war. Only a well arrmed and thoroughly prepared nation can maintain peace, can command respect, can be sure of its national integrity." And Germany began to prepare, thereby forcing the other nations to do the same. The terrible European war is only the culminating fruition of the hydra-headed gospel—military preparedness.

Since the war began, miles of paper and oceans of ink have been used to prove the barbarity, the cruelty, the oppression of Prussian militarism. Conservatives and radicals alike are giving their support to the Allies for no other reason than to help crush that militarism, in the presence of which, they say, there can be no peace or progress in Europe. But though America grows fat on the manufacture of munitions and war loans to the Allies to help crush Prussianism, the same cry is now being raised in America which, if carried into national action, would build up an American militarism far more terrible than German or Prussian militarism could ever be, and that because nowhere in the world has capitalism become so brazen in its greed and nowhere is the State so ready to kneel at the feet of capital.

The very proclaimers of "America first" have long before this betrayed the fundamental principles of real Americanism, of the kind of Americanism that Jefferson had in mind when he said that the best government is that which governs least; the kind of Americanism that David Thoreau worked for when he proclaimed that the best government is the one that doesn't govern at all; or the other truly great Americans who aimed to make of this country a haven or refuge, who hoped

that all the disinherited and oppressed people in coming to these shores would give character, quality and meaning to the country. That is not the America of the polictictian and munition speculators. Their America is powerfully portrayed in the idea of a young New York sculptor I know: a hard cruel hand with long, lean merciless fingers crushing in over the heart of the immigrant, squeezing out its blood in order to coin dollars and give the foreigner blighted hopes and stulted aspirations instead.

No doubt Woodrow Wilson has reason to defend these institutions. But what an idea to hold out to the young generation! How is a military drilled and trained people to defend freedom, peace and happiness? This is what Major General O'Ryan has to say of an efficiently trained generation: "The soldier must be so trained that he becomes a mere automaton; he must be so trained that it will destroy his initiative; he must be so trained that he is turned into a machine. The soldier must be forced into the military noose; he must be jacked up; he must be ruled by his superiors with pistol in hand."

This was not said by a Prussian Junker; not by a German barbarian; not by Treitschke or Bernhardi, but by an American Major General. And he is right. You cannot conduct war with equals; you cannot have militarism with free born men; you must have slaves, automatons, machines, obedient disciplined creatures, who will move, act, shoot and kill at the command of their superiors. That is preparedness, and nothing else.

I am not more Pro-German than pro-Ally. As an Anarchist I refute both, as the "two thieves who are too cowardly to fight." Hence they force the people to do their criminal deed, hence they sacrifice "the boys from every village, hamlet and town."

That which has driven the masses of Europe into the trenches and to the battlefields is not their inner

longing for war; it must be traced to the cut-throat competition for military equipment, for more efficient armies, for larger warships, for more powerful cannon. You cannot build up a standing army and then throw it back into a box like tin soldiers. Armies equipped to the teeth with weapons, with highly developed instruments of murder and backed by the military interests, have their own dynamic functions. We have but to examine into the nature of militarism to realize the truism of this contention.

Miltarism consumes the strongest and most productive elements of each nation. Militarism swallows the lagest part of the national revenue. Almost nothing is spent on education, art, literature and science, compared with the amount devoted to militarism in times of peace, while in times of war everything else is set at naught; all life stagnates, all effort is curtailed; the very sweat and blood of the masses are used to feed this insatiable monster—militarism. Under such circumstances, it must become more arrogant, more aggressive, more bloated with its own importance. If for no other reason, it is out of surplus energy that militarism must act to remain alive; therefore it will seek an enemy or create one artifically. In this civilized purpose and method, militarism is sustained by the State, protected by the laws of the land, is fostered by the home and the school, and glorified by public opinion. In other words, the function of militarism is to kill. It cannot live except through murder.

But the most dominant factor of military preparedness and the one which inevitably leads to war, is the creation of group interests, which consciously and deliberately work for the increase of armament whose purposes are furthered by creating the war hysteria. This group interest embraces all those engaged in the manufacture and sale of munition and in military equipment for personal gain and profit. The family Krupp, for in-

stance, which owns the largest cannon munition plant in the world; its sinister influence in Germany, and in fact in many other countries, extends to the press, the school, the church and to statesmen of highest rank. Shortly before the war, Carl Liebknecht, one of the few brave public men in Germany now, brought to the attention of the Reichstag that the family Krupp had in its employ officials of the highest military position, not only in Germany, but in France and in other countries. Everywhere its emissaries have been at work, systematically inciting national hatred and antagonisms; creating invasion hysteria.

It is not at all unlikely that the history of the present war will trace its origin to the same international murder trust. But is it always necessary for one generation to wade through oceans of blood and heap up mountains of human sacrifice that the next generation may learn a grain of truth from it all? Can we of to-day not profit by the cause which led to the European war, can we not learn that it was preparedness, thorough and efficient preparedness on the part of Germany and the other countries for military aggrandizement and material gain; above all can we not realize that preparedness in America must and will lead to the same result, the same barbarity, the same senseless sacrifice of life? Is America to follow suit, is it to be turned over to the American Krupps, the American military cliques? It almost seems so when one hears the jingo howls of the press, the blood and thunder tirades of the bully Roosevelt, the sentimental twaddle of our college-bred President.

The more reason for those who still have a spark of libertarianism and humanity left to cry out against this great crime, against the outrage now being prepared and imposed upon the American people. It is not enough to claim being neutral; a neutrality which sheds crocodile tears with one eye and keeps the other riveted upon the profits from

war supplies and war loans, is not neutrality. It is a hypocritical cloak to cover the country's crimes. Nor is it enough to join the bourgeois pacifists who proclaim peace among the nations while helping to perpetuate the war among the classes, a war which, in reality, is at the bottom of all other wars.

It is this war of the classes that we must concentrate upon, and in that connection the war against false values, against evil institutions, against all social atrocities. Those who appreciate the urgent need of co-operating in great struggles must oppose military preparedness imposed by the State and capitalism for the destruction of the masses. They must organize the preparedness of the masses for the overthrow of both capitalism and the State Industrial and economic preparedness is what the workers need. That alone leads to revolution at the bottom as against mass destruction from on top. That alone leads to true internationalism of labor against Kaiserdom, Kingdom, diplomacies, military cliques and bureaucracy. That alone will give the people the means to take their children out of the slums, out of the sweat shops and the cotton miles. That alone will enable them to inculcate in the coming generation a new ideal of brotherhood, to rear them in play and song and beauty; to bring up men and women, not automatons. That alone will enable woman to become the real mother of the race, who will give to the world creative men, and not soldiers who destroy. That alone leads to economic and social freedom, and does away with all wars, all crimes, and all injustice.

Defendants' Exhibit B-A.

THE PSYCHOLOGY OF POLITICAL VIOLENCE.

Bjornstjerne Bjornson, in the second part of *Beyond Human Power,* emphasizes the fact that it is among the Anarchists that we must look for the modern martyrs who pay for their faith with their blood, and who welcome death with a smile, because they believe, as truly as Christ did, that their martyrdom will redeem humanity.

"There is a truism that the man in the street seems always to forget, when he is abusing the Anarchists, or whatever party happens to be his *bete noire* for the moment, as the cause of some outrage just perpetrated. This indisputable fact is that homicidal outrages have, from time immemorial, been the reply of goaded and desperate classes, and goaded and desperate individuals, to wrongs from their fellow-men, which they felt to be intolerable. Such acts are the violent recoil from violence, whether aggressive or repressive; they are the last desperate struggle of outraged and exasperated human nature for breathing space and life. And their cause lies not in any special conviction, but in the depths of that human nature itself. The whole course of history, political and social, is strewn with evidence of this fact. To go no further, take the three most notorious examples of political parties goaded into violence during the last fifty years: the Mazzinians in Italy, the Fenians in Ireland, and the Terrorists in Russia. Were these people Anarchists? No. Did they all three even hold the same political opinions? No. The Mazzinians were Republicans, the Fenians political separatists, the Russians Social Democrats or Constitutionalists. But all were driven by desperate circumstances into this terrible form of revolt. And when we turn from parties to individuals who have acted in like manner, we stand appalled by the number of human beings goaded

and driven by sheer desperation into conduct obviously violently opposed to their social instincts.

Now that Anarchism has become a living force in society, such deeds have been sometimes committed by Anarchists, as well as by others. For no new faith, even the most essentially peaceable and humane the mind of man has yet accepted, but at its first coming has brought upon earth not peace, but a sword; not because of anything violent or anti-social in the doctrine itself; simply because of the ferment any new and creative idea excites in men's minds, whether they accept or reject it. And a conception of Anarchism, which, on one hand, threatens every vested interest, and, on the other, holds out a vision of a free and noble life to be won by a struggle against existing wrongs, is certain to rouse the fiercest opposition, and bring the whole repressive force of ancient evil into violent contact with the tumultuous outburst of a new hope.

Under miserable conditions of life, any vision of the possibility of better things makes the present misery more intolerable, and spurs those who suffer to the most energetic struggles to improve their lot, and if these struggles only immediately result in sharper misery, the outcome is sheer desperation. In our present society, for instance, an exploited wage worker, who catches a glimpse of what work and life might and ought to be, finds the toilsome routine and the squalor of his existence almost intolerable; and even when he has the resolution and courage to continue steadily working his best, and waiting until new ideas have so permeated society as to pave the way for better times, the mere fact that he has such ideas and tries to spread them, brings him into difficulties with his employers. How many thousands of Socialists, and above all Anarchists, have lost work and even the chance of work, solely on the ground of their opinions? It is only the specially gifted craftsman, who, if he be

a zealous propagandist, can hope to retain permanent employment. And what happens to a man with his brain working actively with a ferment of new ideas, with a vision before his eyes of a new hope dawning for toiling and agonizing men, with the knowledge that his suffering and that of his fellows in misery is not caused by the cruelty of fate, but by the injustice of other human beings—what happens to such a man when he sees those dear to him starving, when he himself is starved? Some natures in such a plight, and those by no means the least social or the least sensitive, will become violent, and will even feel that their violence is social and not anti-social, that in striking when and how they can, they are striking, not for themselves, but for human nature, outraged and despoiled in their persons and in those of their fellow sufferers. And are we, who ourselves are not in this horrible predicament, to stand by and coldly condemn these piteous victims of the Furies and Fates? Are we to decry as miscreants these human beings who act with heroic self-devotion, sacrificing their lives in protest, where less social and less energetic natures would lie down and grovel in abject submission to injustice and wrong? Are we to join the ignorant and brutal outcry which stigmatizes such men as monsters of wickedness, gratuitously running amuck in a harmonious and innocently peaceful society? No! We hate murder with a hatred that may seem absurdly exaggerated to apologists for Matabele massacres, to callous acquiescers in hangings and bombardments, but we decline in such cases of homicide, or attempted homicide, as those of which we are treating, to be guilty of the cruel injustice of flinging the whole responsibility of the deed upon the immediate perpetrator. The guilt of these homicides lies upon every man and woman who, intentionally or by cold indifference, helps to keep up social conditions that drive human beings to despair. The man who

flings his whole life into the attempt at the cost of his own life, to protest against the wrongs of his fellow-men, is a saint compared to the active and passive upholders of cruelty and injustice, even if his protest destroy other lives besides his own. Let him who is without sin in society cast the first stone at such a one."

That every act of political violence should nowadays be attributed to Anarchists is not at all surprising. Yet it is a fact known to almost everyone familiar with the Anarchist movement that a great number of acts, for which Anarchists had to suffer, either originated with the capitalist press or were instigated, if not directly perpetrated, by the police.

For a number of years acts of violence had been committed in Spain, for which the Anarchists were held responsible, hounded like wild beasts, and thrown into prison. Later it was disclosed that the perpetrators of these acts were not Anarchists, but members of the police department. The scandal became so widespread that the conservative Spanish papers demanded the apprehension and punishment of the gang-leader, Juan Rull, who was subsequently condemned to death and executed. The sensational evidence, brought to light during the trial, forced Police Inspector Momento to exonerate completely the Anarchists from any connection with the acts committed during a long period. This resulted in the dismissal of a number of police officials, among them Inspector Tressols, who, in revenge, disclosed the fact that behind the gang of police bomb-throwers were others of far higher position, who provided them with funds and protected them.

"Repression, tyranny, and indiscriminate punishment of innocent men have been the watchwords of the government of the alien domination in India ever since we began the commercial boycott of English goods. The tiger qualities of the British are

much in evidence now in India. They think that by the strength of the sword they will keep down India! It is this arrogance that has brought about the bomb, and the more they tyrannize over a helpless and unarmed people, the more terrorism will grow. We may deprecate terrorism as outlandish and foreign to our culture, but it is inevitable as long as this tyranny continues, for it is not the terrorists that are to be blamed, but the tyrants who are responsible for it. It is the only resource for a helpless and unarmed people when brought to the verge of despair. It is never criminal on their part. The crime lies with the tyrant."

Even conservative scientists are beginning to realize that heredity is not the sole factor moulding human character. Climate, food, occupation; nay, color, light, and sound must be considered in the study of human psychology.

If that be true, how much more correct is the contention that great social abuses will and must influence different minds and temperaments in a different way. And how utterly fallacious the stereotyped notion that the teachings of Anarchism, or certain exponents of these teachings, are responsible for the acts of political violence.

Anarchism, more than any other social theory, values human life above things. All Anarchists agree with Tolstoy in this fundamental truth: if the production of any commodity necessitates the sacrifice of human life, society should do without that commodity, but it cannot do without that life. That, however, nowise indicates that Anarchism teaches submission. How can it, when it knows that all suffering, all misery, all ills, result from the evil of submission?

Has not some American ancestor said, many years ago, that resistance to tyranny is obedience to God? And he was not an Anarchist even. I would say that resistance to tyranny is man's highest ideal. So long as tyranny exists, in what-

ever form, man's deepest aspiration must resist it as inevitably as man must breathe.

Compared with the wholesale violence of capital and government, political acts of violence are but a drop in the ocean. That so few resist is the strongest proof how terrible must be the conflict between their souls and unbearable social iniquities.

High strung, like a violin, they weep and moan for life, so relentless, so cruel, so terribly inhuman. In a desperate moment the string breaks. Untuned ears hear nothing but discord. But those who feel the agonized cry understand its harmony; they hear in it the fulfilment of the most compelling moment of human nature.

Such is the psychology of political violence.

* * * * * *

Defendants' Exhibit B-C.

A NEW DECLARATION OF INDEPENDENCE.

(*Mother Earth,* Vol. IV., 1909-10.)

When, in the course of human development, existing institutions prove inadequate to the needs of man, when they serve merely to enslave, rob, and oppress mankind, the people have the eternal right to rebel against, and overthrow, these institutions.

The mere fact that these forces—inimical to life, liberty, and the pursuit of happiness—are legalized by statute laws, sanctified by divine rights, and enforced by political power, in no way justifies their continued existence.

We hold these truths to be self-evident: that all human beings, irrespective of race, color, or sex, are born with the equal right to share at the table of life; that to secure this right there must be established among men economic, social, and political freedom; we hold further that government exists

but to maintain special privilege and property rights; that it coerces man into submission and therefore robs him of dignity, self-respect, and life.

The history of the American kings of capital and authority is the history of repeated crimes, injustices, oppression, outrage, and abuse, all aiming at the suppression of individual liberties and the exploitation of the people. A vast country, rich enough to supply all her children with all possible comforts, and insure well-being to all, is in the hands of a few, while the nameless millions are at the mercy of ruthless wealth gatherers, unscrupulous lawmakers, and corrupt politicians. Sturdy sons of America are forced to tramp the country in a fruitless search for bread, and many of her daughters are driven into the street, while thousands of tender children are daily sacrificed on the altar of Mammon. The reign of these kings is holding mankind in slavery, perpetuating poverty and disease, maintaining crime and corruption; it is fettering the spirit of liberty, throttling the voice of justice, and degrading and oppressing humanity. It is engaged in continual war and slaughter, devastating the country and destroying the best and finest qualities of man; it nurtures superstition and ignorance, sows prejudice and strife, and turns the human family into a camp of Ishmaelites.

We, therefore, the liberty-loving men and women, realizing the great injustice and brutality of this state of affairs, earnestly and boldly do hereby declare, That each and every individual is and ought to be free to own himself and to enjoy the full fruit of his labor; that man is absolved from all allegiance to the kings of authority and capital; that he has, by the very fact of his being, free access to the land and all means of production, and entire liberty of disposing of the fruits of his efforts; that each and every individual has the unquestionable and unabridgeable right of free and voluntary association with other equally sovereign individuals

for economic, political, social, and all other purposes, and that to achieve this end man must emancipate himself from the sacredness of property, the respect for man-made-law, the fear of the Church, the cowardice of public opinion, the stupid arrogance of national, racial, religious, and sex superiority, and from the narrow puritanical conception of human life. And for the support of this Declaration, and with a firm reliance on the harmonious blending of man's social and individual tendencies, the lovers of liberty joyfully consecrate their uncompromising devotion, their energy and intelligence, their solidarity and their lives.

Defendants' Exhibit D.

ASPIRATIONS OF THE BLAST.

(*The Blast*, Vol. 1, No. 2.)

The Blast is not a decent, respectable paper. Decency and Respectability—Mother Grundy's bastard twins—change, like the fashions, with age, country and climate, mostly without rhyme or reason.

If you are a sissified mollycoddle of the good old kind that would put draping around a piano leg and go to bed in a night cap, drop this paper right now. It will surely shock you, for the truth is stark naked.

It is said: "The truth shall make you free." So it shall. But the truth is not a nugget found by luck. He who diligently searches will find grains of it now and then.

The Blast preaches no dogma. Its mission is more revolutionary: to arouse independence of feeling, thought and action, without which there is no road to human freedom.

Freedom is primarily a state of mind. It can neither be chained in a dungeon nor heralded from the throne. There is no royal road to it, though the pathways are many. *The Blast* proposes to discuss them.

Any man or movement enlisted in the battle for the right of the worker to the Earth and the fullness thereof will find in *The Blast* a fighting friend, regardless of regimental insignia.

The Blast has no time to split hairs over policies.

If an institution has the elements of slavery within it, we shall grill it, no matter how respectably moss-grown it has become with age.

If *The Blast* can aid in sweeping away the cobwebs of tradition, and call to life the vision of a better, freer world, without oppression and legalized theft, without soldiers and bloodshed, without priests and superstitions, without politicians and graft, plutocrats and paupers, we shall not have worked in vain.

We know our limitations.

We are not profound philosophers. Hence we refuse to be slaves to consistency.

We are not learned scholars. Therefore faulty rhetoric will not freeze the blood in our veins.

We are free from the blight of professional journalism. We shall not worry ourselves to death about style.

We are but workers with a passion for Freedom and with the determination to express it in the face of all difficulty and danger.

If you are with us, *now* is the time to prove your interest and solidarity.

Defendants' Exhibit E.

VIOLENCE AND ANARCHISM.

(*The Blast*, Vol. I, No. 17.)

It is growing rather monotonous to hear the cry of "Anarchist conspiracy" raised whenever and wherever there happens an "unlawful" shot or bomb explosion.

Let us consider the matter dispassionately. Is violence specifically Anarchistic? Is the taking of human life such a very unusual occurrence among "civilized" peoples? Is our whole social existence anything but an uninterrupted series of murder, assassination, mutilation? All our honored institutions are rooted in the very spirit of murder. Do we build warships for educational purposes? Is the army a Sunday school? Our police, jails and penitentiaries—what purpose do they serve but to suppress, kill and maim? Is the gallows the symbol of our brotherhood, the electric chair the proof of our humanitarianism?

"All these things are necessary evils," we are told by the self-satisfied. True, they are necessary; necessary to preserve society *as it is*. But has it ever occurred to the "good citizen" whether it is really necessary to preserve things as they are? Is it indeed worth while?

Organized society can have but one *raison d'etre;* namely, the greatest good of its members. Let us examine, then, whether society, as at present constituted, can be justly said to fulfill its mission.

No life, individual or collective, is possible without the means of subsistence. The social members supplying these means are, consequently, the life-givers of the community. And who are they? The question answers itself automatically: the producers of the country's wealth are the conservators of its life. All members and classes of society should equally benefit by the fact of our combined

effort as a society. But if, for any reason, distinctions are to be made, the producing class, the real backbone of the social body, should have the preference.

In other words, the workers are the ones who should enjoy the greatest benefits arising from social organization. That is the true mission of human society. Does the latter accomplish it? Does it come anywhere near accomplishment?

By no means. The producers are the very ones on whose shoulders rests the whole burden of our social evils. They are the disinherited, the submerged. The products of their toil are the property of someone else; the land and machinery, without which no production is possible, are not owned by them; as a result, they are forced to sell their labor for whatever pittance the employers condescend to give. Hence poverty, starvation, and widespread misery among the very class which, as the sole producer, has the best claim to enjoy the blessings of organized social life.

To support, defend and perpetuate these unjust and terrible conditions it is necessary to have police, prisons, laws and government. For the disinherited are not content to forever starve in the midst of plenty, and the exploited are beginning to cry out against their cruel bondage.

These cries, these signs of rebellious dissatisfaction must be stifled. That is the mission of law and government: to preserve things as they are; to secure to the rich their stolen wealth; to strangle the voice of popular discontent.

Such is the social life of "civilized" countries. A life of misery and degradation, of economic exploitation, governmental suppression, legal brutality and judicial murder. Sham, injustice and tyranny are the synonyms of organized society. Shall we preserve it as it is? It is necessary and desirable? Is it even possible?

"But you can't regenerate society by violence, by a bomb," the well-meaning people argue.

Indeed, full well we known we cannot. Be fair; give ear. Do not confound the philosophy of a better, freer and happier life with an *act resulting from the very evils which that philosophy seeks to abolish.*

Anarchism is the science of social order, as opposed to existing disorder; of brotherhood, as against present Ishmaelitism; of individual liberty and well-being, as opposed to legal oppression, robbery and universal misery.

This condition of social regeneration cannot be achieved by the will or act of any man or party. The enlightenment of the workers regarding the evils of wage slavery, the awakening of the public conscience to a clearer understanding of liberty and justice—these are the forces which will abolish all forms of bondage, political, economical and social, replacing present institutions by free co-operation and the solidarity of communal effort.

"But the bomb?" cry the judges in and out of court. The bomb is the echo of your cannon, trained upon our starving brothers; it is the cry of the murdered striker; 'tis the voice of hungry women and children; the shriek of the maimed and torn in your industrial slaughter houses; it is the dull thud of the policeman's club upon a defenseless head; 'tis the shadow of the crisis, the rumbling of suppressed earthquake—it is Desperation's lightning out of an atmosphere of degradation and misery that king, president and plutocrat have heaped upon humanity. *The bomb is the ghost of your past crimes.*

You may foam and legislate, arrest, imprison and deport. You may still further tighten the thumbscrews of persecution, erect more gallows, and build electric chairs. Pitiful fools! Thus was Christ crucified as a diturber of "Caesar's peace." Did Golgotha suppress his teaching? Have the un-

speakable tortures of the Inquisition eradicated free thought? Did Louis XVI save his crown—or his head—by *lettre de cachet?* Has the cause of the Abolitionists been defeated by the judicial murder of John Brown?

"Our graves will speak louder than the voices you strangle!" In spite of all the strenuous governmental, capitalistic and journalistic efforts to misrepresent and suppress Anarchists and Anarchism —because of those efforts the people will yet learn the truth.

Defendants' Exhibit L.

Friends:

I regret exceedingly that I cannot be with you all to-morrow night. I consider the work of the No Conscription League of such importance that I would have cancelled my date in Springfield had my comrades not gone to large expenses to arrange the meetings here. Since I cannot be present to-morrow, I wish you to know my position toward the work we have undertaken.

As I said at our great meeting, I am ready to go to any extent to back conscription objectors in their noble stand against murder. If it were a question of my own life even, I should still hold high to our Ideal of Internationalism and the spirit of solidarity which makes it impossible to serve the Capitalist class in its insatiable greed for profits.

But what I do with myself in behalf of my ideal is quite another matter from what I would suggest to you to do; I cannot and will not take the responsibility for your lives, your liberty. Therefore I want to place the following consideration before you:

1) Your refusal to register will mean imprisonment and conscription after your sentence is over.

Your consent to register will also mean conscription and your refusal to be conscripted imprisonment for many years perhaps. This may seem exaggerated, but I know the utter unscrupulousness of the American Government. I know it will surpass Europe in brutality and severity. Now friends, you must consider well what you want to do and do it only if you feel strong to carry out your decision. Do not depend on having the support of thousands. You may have them and you may not. It is best to make sure whether you will want to be consistent even if you have to stand alone.

Whichever way you decide, you can count on my support and backing. I place myself and MOTHER EARTH as the disposal of the profound Ideal—the No Conscription League, the determined opposition to war and coercion into the military noose.

I am strongly in favor of a Mother's No Conscription Meeting if a hall can be obtained. I suggest a second Manifesto addressed to Mothers to be distributed from house to house. If no hall can be obtained I suggest bill posting the town.

I will also suggest that arrangements be made with the labor Press to print the reasons why conscientious objectors will not register, signed by all those who will decide upon this course. Even if the labor Press has to be paid, such a proclamation ought to be printed on the day of registration. Comrades, the most important step is to know what you want to do and stand by it to the end. Then whatever happens you will have done your share to hasten the day when humanity shall awaken to the frightfulness, the cruelty and the uselessness of war.

Long live the spirit of Internationalism. Long live the Solidarity of Labor. Long live the Ideal of a free, proud, regenerated Humanity.

EMMA GOLDMAN.

The foregoing contains all of the testimony given at the trial, and all of the foregoing proceedings were had and exceptions taken and noted by the Court before the jury retired to consider of its verdict, and because the same would otherwise not appear of record the defendants pray the Court to sign this, their bill of exceptions, to have the same force and effect as to each of said exceptions as though the same were set forth in a separate bill of exceptions, which is granted; and accordingly, the Court signs this defendants' bill of exceptions, to have the force and effect aforesaid, now for then, this 19th day of September, 1917.

JULIUS M. MAYER,
Judge.

Notice of settlement waived September 18th, 1917.

FRANCIS G. CAFFEY,
U. S. Attorney, S. D. of New York

Assignments of Error.

UNITED STATES DISTRICT COURT,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

ALEXANDER BERKMAN and EMMA GOLDMAN,
Plaintiffs-in-Error,

against

UNITED STATES OF AMERICA,
Defendant-in-Error.

Now comes the above-named Alexander Berkman and Emma Goldman, plaintiffs-in-error, by their attorney, and make and file the following assignments of error upon which they will rely upon the prosecution of the writ of error to the Supreme Court of the United States sued out by them herein to review the errors committed in the above-entitled cause in the United States District Court for the Southern District of New York and in the proceedings had therein and against them in the said court:

That the District Court erred as follows:

FIRST: In not dismissing the indictment herein, upon the ground that the same did not charge the defendants with any offense against the United States or any law thereof in that it is not a violation of any law for defendants to have conspired and agreed among themselves and with other persons to aid, abet, counsel, command, induce and procure divers persons subject to registration to fail and refuse to present themselves for registration and submit thereto in accordance with "An act to authorize the President to increase temporarily the military establishment of the United States," approved the 18th day of May, 1917.

SECOND: In not granting the motion for arrest of judgment on the ground that the indictment did not charge an offense against the United States or any law thereof.

THIRD: In not setting aside the verdict upon the ground that the facts proved did not constitute an offense against the United States or any law thereof.

That the District Court erred in the construction and application of the Constitution of the United States and in the disposition of the merits of the case as follows:

FOURTH: In denying the defendants' motion made at the opening of the trial to dismiss the indictment upon the ground that the same did not charge the defendants with any offense against the United States or any law thereof upon the following grounds:

1. That there can be no conspiracy to violate the law entitled "An act to authorize the President to increase temporarily the military establishment of the United States," approved May 18th, 1917, also known as "The Conscription Law," in that the said Act is unconstitutional upon the following grounds:

A. It violates Section 13, Subd. 1 of the Amendments to the United States Constitution which reads as follows:

> "Neither slavery nor involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted shall exist within the United States or any place subject to their jurisdiction."

The said law imposes military, agricultural or industrial service, under any conditions determined by the military or Congress as to hours, condition

and pay, on all male persons in the United States between the ages of twenty-one and thirty, both inclusive, excepting officers and enlisted men of the regular Army, the Navy, the Marine Corps, and the National Guard and Naval Militia, while in the service of the United States and officers in the Officers' Reserve Corps, and enlisted men in the Enlisted Reserve Corps, while in active service.

B. It violates Article I of the Amendments to the United States Constitution which reads as follows:

> "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

That this "Conscription Law" does establish a religion in that it gives a special privilege to members of "any well recognized religious sect or organization at present organized and existing, and whose existing creed or principles forbid its members to participate in war in any form, and whose religious convictions are against war or participation therein in accordance with the creed or principles of said religious organizations" and it prohibits and invades the free exercise of the religion of any and all individuals not belonging to "any well recognized religious sect or organization at present organized and existing, and whose existing creed or principles forbid its members to participate in war in any form, and whose religious convictions are against war or participation in accordance with the creed or principles of said religious organizations."

C. It violates Article I of the United States Constitution, Section 8, Subds. 15 and 16, which provides:

> "That Congress shall have power (Subd. 15): to provide for calling forth the militia, to

execute the laws of the Union, suppress insurrections, and repel invasions." (Subd. 16): "To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress."

That neither an invasion nor a rebellion is taking place, and further that the law does not call the Militia but calls upon all male persons with certain exceptions between the ages of twenty-one and thirty years inclusive.

D. It violates Article I, Section 8, Subd. 12, of the Constitution which reads as follows:

> "To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years."

E. It violates Article IV, Section II, Subd. I, of the Constitution which reads as follows:

> "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

That the said law imposes military, agricultural or industrial service on all male citizens between the ages of twenty-one and thirty years inclusive, with certain exceptions, thereby excluding the excepted classes and older and younger males.

F. It violates Article V of the Amendments to the Constitution which reads as follows:

> "No person shall * * * be deprived of life, liberty or property without due process of law."

FIFTH: In denying the defendants' motion to dismiss the indictment herein or to instruct the jury to acquit the defendants made at the conclusion of the case as presented by the United States upon the grounds contained in the first assignment of error, and upon the further ground that the indictment does not charge a crime; that upon all the facts proven the defendants are not guilty; that there is no proof that the defendants conspired unlawfully, wilfully, knowingly, feloniously together and with divers persons and did agree among themselves and with the said divers persons to aid, abet, counsel, command, induce and procure divers persons, the same being male persons between the ages of twenty-one and thirty, both inclusive, being subject to registration in accordance with regulations prescribed by the President to unlawfully and wilfully fail and refuse to present themselves for registration and submit thereto; that there is no proof of any overt act to carry out the said conspiracy.

SIXTH: In denying the defendants' motion to set aside the verdict of the jury rendered against them which motion presented to the trial court was as follows: That the verdict was contrary to the evidence, contrary to the law.

SEVENTH: In denying the defendants' motion for an arrest of judgment upon all the grounds hereinbefore set forth.

WHEREFORE, the said Alexander Berkman and Emma Goldman, plaintiffs-in-error, pray that the said judgment herein for the errors aforesaid and for the errors in the record and proceedings herein may be reversed and altogether held for nothing, and that their said trial should go for naught and that the said plaintiffs-in-error may be restored to all things which they have lost by reason of said

judgment and for such other and further relief as to the Court may seem proper.

Dated, July Seventeenth, 1917.

HARRY WEINBERGER,
Attorney for Alexander Berkman
and Emma Goldman,
Plaintiffs-in-Error,
Office & P. O. Address,
261 Broadway,
Manhattan,
New York City.

Petition for Writ of Error.

UNITED STATES DISTRICT COURT,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA,
Plaintiffs,

against

ALEXANDER BERKMAN and EMMA GOLDMAN,
Defendants.

Now comes the above defendants Alexander Berkman and Emma Goldman, by their attorney, and complain that on the 9th day of July, 1917, the District Court of the United States for the Southern District of New York gave judgment in the above-entitled cause against the defendants, in which judgment, in this cause, certain errors were committed to the prejudice of these defendants:

FIRST: In respect to the Court's construction and application of the Constitution of the United States and its disposition of the merits of the cause; all of which will appear more in detail from the Assignment of Errors which is filed with this petition.

WHEREFORE, the said defendants Alexander Berkman and Emma Goldman pray for the allowance of a writ of error and such other orders and processes as may cause all and singular the record and proceedings in said cause to be sent to the Honorable the Justices of the Supreme Court of the United States under and according to the laws of the United States in that behalf made and provided, and so that the same being inspected, the said Justices of the said Supreme Court of the United States cause further to be done therein to correct that error what of right and according to law ought to be done, and also that an order be made herein that all other proceedings in this action in this court be suspended and stayed until the determination of said Writ of Error by the said Supreme Court of the United States.

And your petitioner will every pray, etc.

Dated this 17th day of July, 1917.

HARRY WEINBERGER,
Attorney for Defendants
Alexander Berkman and Emma
Goldman,
Office & P. O. Address,
261 Broadway,
Borough of Manhattan,
City of New York.

Supersedeas.

Writ of Error, to operate as a Supersedeas, allowed, returnable, according to law, the defendants to furnish bail in the sum of Twenty-five Thousand ($25,000) Dollars each, conditioned according to law, subject to the approval of one of the Judges of the United States District Court for the Southern District of New York.

Dated, July 19, 1917.

LOUIS D. BRANDEIS,
Associate Justice of the United States Supreme Court for the Second Circuit.

Citation.

UNITED STATES OF AMERICA, ss.:

To the United States of America, GREETING:

You are hereby cited and admonished to be and appear at a SUPREME COURT OF THE UNITED STATES, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the District Court of the United States for the Southern District of New York, wherein Alexander Berkman and Emma Goldman are plaintiffs-in-error and you are defendant-in-error, to show cause, if any there be, why the judgment rendered against the said plaintiffs-in-error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable LOUIS D. BRANDEIS, Associate Justice of the Supreme Court of the United States, this 19th day of July, in the year of our Lord one thousand nine hundred and seventeen.

LOUIS D. BRANDEIS,
Associate Justice of the Supreme Court of the United States.

Stipulation.

UNITED STATES DISTRICT COURT,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

ALEXANDER BERKMAN and EMMA GOLDMAN,
Plaintiffs-in-Error,

against

UNITED STATES OF AMERICA,
Defendant-in-Error.

It is hereby stipulated and agreed that the record in the above-entitled case shall consist of the following papers now on file with the Clerk of the United States District Court for the Southern District of New York:

Writ of Error and order allowing same, dated July 19th, 1917.

Indictment, filed June 20th, 1917.

Bill of Exceptions, dated September 19th, 1917.

Assignment of Error, dated July 17th, 1917.

Petition for Writ of Error and supersedeas endorsed thereon, dated July 19th, 1917.

Citation, dated July 19th, 1917.

Stipulation Settling Record.

Certificate, dated September 19, 1917.

Dated, New York, September 19, 1917.

HARRY WEINBERGER,
Attorney for Plaintiffs-in-Error.

FRANCIS G. CAFFEY,
United States Attorney for the
Southern District of New York,
Attorney for Defendant-in-Error.

Stipulation Settling Record.

UNITED STATES DISTRICT COURT,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

ALEXANDER BERKMAN and EMMA GOLDMAN,
Plaintiffs-in-Error,

against

UNITED STATES OF AMERICA,
Defendant-in-Error.

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated, New York, September 17, 1917.

HARRY WEINBERGER,
Attorney for Plaintiffs-in-Error.

FRANCIS G. CAFFEY,
United States Attorney for the
Southern District of New York,
Attorney for Defendant-in-Error.

Clerk's Certificate.

UNITED STATES DISTRICT COURT,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

ALEXANDER BERKMAN and EMMA GOLDMAN,
Plaintiffs-in-Error,

against

UNITED STATES OF AMERICA,
Defendant-in-Error.

I, ALEXANDER GILCHRIST, JR., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In testimony whereof I have caused the seal of the said Court to be hereunto affixed, in the City of New York, in the Southern District of New York, this 1st day of September, in the year one thousand nine hundred and seventeen.

(Seal)

ALEXANDER GILCHRIST, JR.,
Clerk.

[redacted]

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1917.

EMMA GOLDMAN and ALEXANDER BERKMAN,
Plaintiffs-in-Error,

against

THE UNITED STATES,
Defendant-in-Error.

No. 702.

BRIEF ON BEHALF OF THE PLAINTIFFS-IN-ERROR.

Statement.

The *indictment* charges the defendants with conspiracy as accessories before the fact for violation of the Draft Act as follows:

> "THE GRAND JURORS OF THE UNITED STATES OF AMERICA, within and for the District aforesaid, on their oath present that on the eighteenth day of May in the year of our Lord one thousand nine hundred and seventeen, the President of the United States of America duly issued his Proclamation as provided by the Act of Congress approved May 18, 1917, entitled, 'An Act to authorize the President to increase temporarily the Military Establishment of the United States,'

in which said Proclamation the President of the United States duly proclaimed and gave notice to all persons subject to registration in the several States and in the District of Columbia, in accordance with the said Act of Congress approved May 18, 1917, that the time and place of such registration shall be between 7 A. M. and 9 P. M. on the fifth day of June in the year of our Lord one thousand nine hundred and seventeen, at the registration place in the precinct wherein they may have their permanent homes; that those who shall have attained their twenty-first birthday and who shall not have attained their thirty-first birthday on or before the day therein named are required to register, excepting only officers and enlisted men of the regular army, the navy, the Marine Corps, and the National Guard and Naval Militia, while in the service of the United States, and officers in the Officers' Reserve Corps, and enlisted men in the Enlisted Reserve Corps, while in active service:

And the Grand Jurors aforesaid, on their oath aforesaid, do further present that Emma Goldman and Alexander Berkman (hereinafter referred to as the defendants), both late of the City and County of New York, in the District aforesaid, heretofore, to wit, on the eighteenth day of May in the year of our Lord one thousand nine hundred and seventeen, and on each and every day thereafter up to and including the date of the filing of this indictment, at the Southern District of New York and within the jurisdiction of this Court, unlawfully, wilfully, knowingly and feloniously did conspire together and agree between themselves, and with divers other persons whose names are to the Grand Jurors unknown, to commit an offense against the United States, that is to say: The said defendants unlawfully, wilfully, knowingly and feloniously did conspire together and agree between themselves, and with the said divers persons whose names

are to the Grand Jurors unknown, that divers persons whose names are to the Grand Jurors unknown, the same being male persons between the ages of twenty-one and thirty, both inclusive, being subject to registration in accordance with regulations to be prescribed by the President, and upon proclamation by the President and other public notice given by him and by his direction stating the time and place of such registration, being under the duty as persons of the designated ages, except officers and enlisted men of the Regular Army, the Navy, and the National Guard and Naval Militia while in the service of the United States, to present themselves for and submit to registration under the provisions of the Act of Congress, approved May 18, 1917, entitled, 'An Act to authorize the President to increase temporarily the Military Establishment of the United States,' should unlawfully and wilfully fail and refuse to present themselves for registration and to submit thereto, as provided by the aforementioned Act of Congress, approved May 18, 1917;

And the Grand Jurors aforesaid, on their oath aforesaid, do further present that the said defendants, Emma Goldman and Alexander Berkman, unlawfully, wilfully, knowingly and feloniously did conspire together and agree between themselves, and with the said divers persons whose names are to the Grand Jurors unknown, to aid, abet, counsel, command, induce and procure divers persons whose names are to the Grand Jurors unknown, the same being male persons between the ages of twenty-one and thirty, both inclusive, being subject to registration in accordance with regulations to be prescribed by the President, and upon proclamation by the President and other public notice given by him and by his direction stating the time and place of such registration, being under the duty as persons of the designated ages, except officers and enlisted men of the Reg-

ular Army, the Navy, and the National Guard and Naval Militia while in the service of the United States, to present themselves for and submit to registration under the provisions of the Act of Congress approved May 18, 1917, entitled, 'An Act to authorize the President to increase temporarily the Military Establishment of the United States,' unlawfully and wilfully to fail and refuse to present themselves for registration and to submit thereto, as provided by the aforementioned Act of Congress approved May 18, 1917;

And to effect the object of the said conspiracy, the defendant Emma Goldman, on the eighteenth day of May in the year of our Lord one thousand nine hundred and seventeen, did deliver an address beginning with the words, 'We don't believe in conscription!' and ending with the words 'we can support the point of real freedom and liberty and brotherhood,' at a public meeting held in the Harlem River Park and Casino, situate at Second Avenue, 126th to 127th Streets, in the City and County of New York, in the Southern District of New York;

And further to effect the object of the said conspiracy, the defendant Alexander Berkman, on the first day of June in the year of our Lord one thousand nine hundred and seventeen, did publish and cause to be published, in the City and County of New York, in the Southern District of New York, a periodical and publication entitled '*The Biast*, Vol. II. New York, June 1, 1917. No. 5';

And further to effect the object of the said conspiracy, the defendant Emma Goldman, on the second day of June in the year of our Lord one thousand nine hundred and seventeen, did give to one James A. Hagerty, at the office of the No-Conscription League, situate at 20 East 125th St., in the City and County of New York, in the Southern District of New York, a copy of a peiodical and publication entitled '*Mother Earth*, Vol. XII. June, 1917. No. 4';

And further to effect the object of the said conspiracy, the defendant Alexander Berkman, on the fourth day of June in the year of our Lord one thousand nine hundred and seventeen, did deliver an address beginning with the words 'Comrades, friends and enemies,' and ending with the words 'You know that after all, the cause of the soldiers and the workers is the common cause,' at a public meeting held at the Hunts Point Palace, situate at 953 Southern Boulevard, in the City of New York and County of Bronx, in the Southern District of New York;

And further to effect the object of the said conspiracy, the defendant Emma Goldman, on the fourth day of June in the year of our Lord one thousand nine hundred and seventeen, did deliver an address beginning with the words 'Men, don't you know that the soldiers came here to disturb the meeting?' and ending with the words 'and you will all raise one mighty voice just going to drown militarism,' at a public meeting held at the Hunts Point Palace, situate at 953 Southern Boulevard, in the City of New York and County of Bronx, in the Southern District of New York;

Against the peace of the United States and their dignity, and contrary to the form of the statute of the United States in such case made and provided. (§§37 and 332 U. S. C. C., and §5 of the Act of May 18, 1917.)"

Nowhere is there any allegation of an actual violation of the Draft Act or of any principal who may have violated the act.

Assignments of Error.

These will be found *in extenso* on pages 534-539 of the transcript of record.

POINT I.

No crime charged in the indictment.

The indictment did not charge the defendants with any offense against the United States. It is not a violation of any law for defendants to have conspired and agreed among themselves and other persons to aid, abet, counsel, command, induce and procure divers persons subject to registration to fail and refuse to present themselves for registration unless alleged someone did fail to register because of defendants' acts. The lower court so stated to the jury *after the conviction* (p. 448), as follows:

> "The Government has thus far enacted no special statute to deal with those who counsel disobedience, and who advise insurrection, who seek to reach and control the humbler people, some of whom do not understand things, by methods such as were disclosed in this case."

If that was the Court's opinion, it should have dismissed the indictment at the opening of the trial.

However, we find that the defendants are really indicted as accessories under Section 332, U. S. C. C., which reads:

> "Whoever directly commits any act constituting an offense defined in any law of the United States, or aid, abets, counsels, commands, induces or procures its commission, is a principal."

The indictment does not allege that any young man who was urged or solicited to refuse to register failed, as a result of said alleged conspiracy, to comply with the Registration Act, approved May 18th, 1917, or the Proclamation of the President of the

United States under date of the 5th of June, 1917. The indictment therefore does not state a crime, as there can be no accessory before the fact, unless there is a principal who has actually committed a crime.

In *Bishop New Criminal Law*, Vol. 1, Sec. 670, it is said:

> "Under a statute making it a felony to 'counsel, procure, or command any other person to commit any felony,' one becomes a felon only when the felony persuaded to is committed."

Sec. 671:

> "Moreover, statutes like these do not supersede the necessity of proving the guilt of the principal; for in the nature of things, one cannot procure what is not done, or receive the doer of what was never performed."

Citing:

> *Simmon* v. *State*, 4 Ga., 465.
> *Ogden* v. *State*, 12 Wis., 532.

In *U. S.* v. *Hartwell* (U. S. Circuit Ct., D. Mass.), a well-considered case, 26 Fed. Cas., No. 15,318, the Court said:

> "* * * the charge against the accessory is in a certain sense ancillary to the offense committed by the principal. Take a case, for example, where it appears that the felony charged had never been committed; it could not be said within the meaning of the criminal law that one charged as an accessory before the fact procured, counselled, or commanded another to commit that felony, * * *.
>
> "Whenever the accessory is indicted before the principal has been convicted, it is neces-

sary that the indictment against him, whether they are indicted separately, or jointly, should allege the guilt of the principal, as the offense of the accessory, even when charged as such before the fact, depends upon the principal's guilt, and is never to be regarded as complete unless the principal offense was actually committed."

POINT II.

No evidence of defendants' guilt.

In *Chappel* v. *United States*, 160 U. S., 499, 509, the Court said:

> "This Court * * * has appellate jurisdiction of this case as one in which the constitutionality of a law of the United States was drawn in question; and, having acquired jurisdiction under this clause, has the power to dispose, not merely of the constitutional question, but of the entire case, including all questions, whether of jurisdiction or of merits" (citing cases).

Direct appeals will be entertained where the construction or application of the Constitution of the United States is involved and the evidence is contained in a bill of exceptions.

Union & P. B. of M. N. Memphis, 189 U. S., 71.
Elkin v. *U. S.*, 142 U. S., 651.
Horner v. *U. S.*, 143 U. S., 570.
Williamson v. *U. S.*, 207 U. S., 425.
Spreckles Sugar Ref. Co. v. *McClair*, 192 U. S., 397.

The provision "involves the construction or application of the constitution" does not make any

distinction between civil and criminal cases, and this Court will review judgment on writ of error, in criminal case.

Motes v. *U. S.*, 178 U. S., 458.

Defendants are charged with a conspiracy to have young men of draft age refuse to register, violating Section 37 and Section 332, U. S. C. C., and Section 5 of the Act of May 8th, 1917. To find a person guilty of conspiracy there must be an agreement and an overt act.

Pettibone v. *U. S.*, 148 U. S., 197.

Under Section 332 it must be shown that someone did not register by reason of defendants' acts in order to make defendants principals, as accessories before the fact.

See:

U. S. v. *Hartwell*, *supra*.

In *Buck* v. *Commonwealth*, 107 Pa. St., 486, the Court said:

> "Since the act of 1860 it is no longer necessary to convict the principal before the accessory can be tried, yet it is still requisite in some way to prove that the principals are guilty before the accessory can be convicted. No man can be accessory to a crime which has never been committed."

In *Ogden* v. *State*, 12 Wis., 592, the Court said:

> "For however clearly it may have appeared that Ogden counseled and advised Wright to commit the offense, yet if Wright never did so in point of fact, and the barn was set on fire by someone else, or by other means, then Ogden was innocent of the crime, with the

> commission of the crime (accessory before the fact), of which he stood charged."

In *Stabler* v. *Com.*, 95 Pa. St., 318, the Court said:

> "Merely soliciting one to do an act is not an attempt to do that act: *Rex* v. *Butler*, 6 C. & P., 368; *Smith* v. *Com.*, 4 P. F. Smith, 209. In this last case it was said, 'In a high, moral sense it may be true that solicitation is attempt; but in a legal sense it is not.'"

The following is a concise statement of all the facts as shown in the evidence:

Defendant Berkman was released from jail Monday night at 5 P. M., and the trial of the defendants proceeded Wednesday morning, June 27th (p. 9). Defendant Berkman had sustained a severe injury to his leg, and it was necessary for him to have proper medical treatment, and he was suffering great pain at the time (see p. 11, Dr. Max Strunsky's letter).

A motion was made to dismiss the indictment on the ground that the indictment does not charge a crime and that the Conscription Law is unconstitutional (p. 15).

The offices of *Mother Earth* magazine and *The Blast* magazine were at 20 East 125th Street, on two different floors, and the work for the No-Conscription League was done mostly in the office of *The Blast* (p. 17). The No-Conscription League was a voluntary association (p. 18), of which Mr. Berkman and Miss Goldman were members (p. 19). *The Blast* and *Mother Earth* were two separate, independent magazines; Mr. Berkman was editor of *The Blast* and Miss Goldman was editor of *Mother Earth* (pp. 22 and 49). Mr. Berkman was, however, editor of *Mother Earth* up to November, 1915, and later started *The Blast* in California (p.

50). *The Blast* was published in San Francisco up to March, 1917, when it came to New York City (p. 22). The No-Conscription League was formed May 9th (p. 23), before the Draft Law was passed, to protest against its passage (p. 24). The League got out a manifesto (Government's Exhibit 1, see p. 25, and Exhibit C, 451). A protest meeting was held May 18th, 1917, at the Harlem River Casino before the Draft Act was passed (pp. 27 and 58), and both defendants spoke (p. 28). The meeting started at about 8 P. M. and continued until about 10.30 (p. 69). Neither of the defendants had seen a newspaper or announcement that the Draft Bill was passed while the meeting was being held (p. 70).

No one at the meeting of May 18th knew that the Draft Law was passed (pp. 58 and 59), and they did not learn of it until after the meeting. The meeting was called the "no-conscription meeting," and the Government admitted that it was not a "no-registration meeting" (p. 60).

There was a committee meeting of the League held on May 23rd, at which Miss Goldman was not present, she being at Springfield, Massachusetts, lecturing (p. 63). Miss Goldman wrote a letter from Springfield.

There was a meeting held at Hunt's Point Palace on June 4th (p. 71).

Copies of the June *Mother Earth* and the June *Blast* were given out at the office of *Mother Earth* and *The Blast* office to a reporter (pp. 76 and 132).

Defendants were arrested June 15, 1917.

William H. Randolph, a patrolman of the New York City Police Department, who was also by training a shorthand reporter, attended the meeting at the Harlem River Casino on May 18th and took down the speech of Miss Goldman (p. 137); took down the speech and transcribed it. He testified

that he could take from 125 to 150 words a minute (p. 140), but that his average was about 100 to 125 words a minute (p. 154). His notebook showed that Miss Goldman finished speaking at 10.15 P. M. (p. 143). He took his notes standing on a table without support for his book (p. 145). Mr. Randolph states that she said at that meeting of the 18th of May: "We are going to support all the men who will refuse to register" (p. 161). He also testified that Miss Goldman said at that meeting: "We believe in violence and we will use violence" (p. 162). Police, detectives and secret service men were there, but did not interfere with Miss Goldman's speech (p. 162).

Mr. Charles Pickler, for the defense, a member of the bar of the State of New York and the Federal Bar, and an expert shorthand reporter for twenty-five years (pp. 163 and 165), capable of taking 225 words a minute (p. 220), reported and transcribed the speeches of Emma Goldman and Berkman at Hunt's Point Palace at the request of the No-Conscription League. Mr. Pickler testified that under the circumstances testified to by Mr. Randolph he could not take her speech down as she talks 200 words a minute (pp. 166 and 167; see also p. 220). When Mr. Randolph was put to a stenographer's test he failed woefully (pp. 183 to 187).

Mr. John C. Dillon, a stenographer in the employ of the New York Police Department, a Government witness, testified Emma Goldman speaks about 125 words a minute (p. 199). A large part of the trial was taken up with the contentions in reference to the meeting of May 18th, in reference to violence, and supporting men who will refuse to register, but all of that was taken away by the Judge, incidentally, in his charge as not to be considered by them (p. 37), but the effect of the evidence was left there, the grilling of the witnesses and the at-

titude of the Court in reference to the meeting of May 18th, left the impression of the Court's desire for defendants' conviction.

At the end of Government's case a motion was made to dismiss on the ground no evidence that Emma Goldman and Berkman advised people not to register or that their writings advised people not to register (p. 204), which motion was denied and exception taken.

The Court should have dismissed at the end of the Government's case, the Court being of the opinion that telling people not to register is not a crime (see Point I). The defendants could not have committed an offense against the Draft Act, or conspired to do *an act* against the law, because neither was subject to the draft. They might have conspired to ask someone to do an act, by not registering, but that would not be an overt act on the part of the defendants.

In 8 *Cyc.*, 628, it is stated that:

> "By a Federal statute (U. S. Rev. St., Sec. 5440)" (now Sec. 37, U. S. C. C.) "it is made a punishable offense for two or more persons to conspire to commit any offense against the United States. Conspiracy as used in this statute means an unlawful agreement to do some act which by some law of the United States has been made a crime, and three elements are necessary to constitute it: (1) *For two or more persons to conspire together;* (2) to commit an offense against the United States; (3) *an overt act of one or more parties to effect the object of the conspiracy. In re Wolf*, 27 Fed., 606; *U. S.* v. *Cassidy*, 67 Fed., 698."

See:

U. S. v. *Barrett*, 65 Fed., 62.

If the meeting of May 18th is eliminated from the case, as the Court did at the end of the trial, the motion to dismiss at the end of the Government's case should have been granted, because then there was no evidence before the Court at all.

Lincoln Steffens, reporter, correspondent and magazine writer, for the defendants, testified that he had reported the first speech Emma Goldman ever made and had heard her talk often and had private discussions with her and had never heard her say she would use violence (p. 216). Nor that she would tell others to use violence, but that as a matter of fact, he had heard her say that she was opposed to violence, and that as to war and militarism she had always been opposed to it (p. 217).

Paul Munter, public stenographer and official stenographer for Hon. Peter B. Olney, referee in bankruptcy, stenographer for twenty years (passed No. 1 as court stenographer for Supreme Court, Westchester County, with rating 94 per cent.), has reported Emma Goldman's lectures and speeches often since 1914. He was of opinion she spoke at not less than 150 words a minute and often went over 200 words a minute (pp. 223 and 224).

Helen Boardman, a psychological research worker for the Bureau of Educational Experiments, a witness for defendants (whose forefathers came to this country 1640), testified that she did not hear Emma Goldman, at the May 18th meeting, say, "We believe in violence and we will use it" (p. 227). That she heard Emma Goldman say she would not advise people not to register, and the reasons for not advising them was that she, Emma Goldman, was not subject to registration herself and that it was a matter for each individual's conscience (p. 228; see also p. 229).

Mary Eleanor Fitzgerald testified (p. 241) that a letter sent from Springfield, Mass., by Miss Gold-

man, was read at an informal meeting of No-Conscription League on May 23rd (Defendant's Exhibit L, p. 531), against advising people not to register, and giving the reasons. This letter specifically states, "But what I do with myself in behalf of my ideal is quite another matter from what I would suggest to you to do; I cannot and will not take the responsibility for your lives, your liberty." This exhibit was a typewritten copy of the original letter, and was taken by the Government in its sudden raid of defendants' offices on June 15th (p. 233).

That was the stand of defendants and the No-Conscription League, "not to tell people not to register" (pp. 252 and 253).

Anna Sloan (wife of John Sloan, the painter), testifying for defendants, testified that she did not hear Emma Goldman say: "I believe in violence and we will use violence," and that she had told her, in previous conversations, she did not believe in violence (p. 273).

Rebecca Shelley (a former school teacher, and college graduate) testified for defendant that she heard the statement contained in Defendants' Exhibit L from Miss Goldman at the May 23rd meeting (p. 281).

Minna Lederman (a graduate of Barnard College) testified for defendants that at the May 18th meeting she did not hear Emma Goldman advise or urge the people not to register, nor did she say that "We believe in violence and we will use violence" (p. 291). Many other witnesses of unimpeachable position testified to the same effect.

Bolton Hall, lawyer and writer, testifying for defendants, stated he knew Emma Goldman for more than twenty years, and never heard her urge violence (p. 306).

The Court, in its charge to the jury (p. 437), said question of "violence" not germane, but the effect on the jury could not be eradicated after they had heard that question pounded at for days. It would be humanly impossible for them to leave it out of their deliberations, and it helps explain the verdict of "guilty" brought in by them. The Court knew that "We believe in violence" was no part of Government's case, but he left it in. He knew the whole meeting of May 18th was inadmissible, as the Draft Act had not been signed; yet the Court only casually says it is not to be considered by jury. As a matter of fact, it was impossible for any jury to eliminate "We believe in violence" and the rest of the May 18th meeting from their minds or verdict.

Motion made to dismiss at end of case (p. 426), and should have been granted (see Point I).

Court charged (p. 429) that:

> "Before act passed May 18, 1917, any person could discuss in the fullest manner possible the provisions of pending legislation and * * * use the most vehement language, etc."

Judge charged (p. 437) the jury must find that Draft Act was not signed until after Emma Goldman was through talking at meeting on May 18th, so that everything that was said by Emma Goldman (Berkman spoke before Emma Goldman) at that meeting cannot be considered part of the overt act and the Court so charged, and therefore the whole case of the prosecution falls. What was said at the Hunt's Point Palace is not disputed, as we had our stenographer there, and the people were not advised or urged not to register (Government's Exhibit 33, see p. 495).

When the jury brought in the verdict of guilty, at 6 P. M. (p. 444), Miss Goldman asked that sentence be deferred for a few days, and that bail be continued (bail was $25,000 cash each), because defendants wished to arrange their affairs, which they had not been able to do during the trial. The Court denied this, and proceeded to the sentence (p. 445), but did inform defendants, *who were in custody,* that they could make application for bail to the Circuit Court (p. 445). The Circuit Court was in recess, and defendants could not walk out of the court room, being in custody, to look for a judge of the Circuit Court at 6 P. M.

The Court then expressed to the jury "the appreciation of the Court and of the community * * * for your fearless and prompt manner in which you have discharged your duty."

And then the Court in an equally fearless and prompt manner imposed the full penalty of the law, "two years and $10,000 fine," on each defendant, and ended by saying, "The responsibility for the custody of the defendants is with the Marshal for the Southern District of New York. He may exercise such discretion in that regard as he deems best" (p. 449). Defendant Goldman informed the Court they intended to appeal the case, and the Court told them they could have ninety days to sue out a writ of error. He also told them they would have the fullest opportunity within the ninety days to consult counsel and prepare their assignments of error and writs of error; but when Miss Goldman asked whether within the next hour or two they could consult with counsel regarding the appeal the Court replied: "The custody of the defendants is with the Marshal, and the Marshal will deal with the matter referred to. The court is now adjourned" (p. 450).

Straight from the court room, after 7 P. M., the defendants were taken to the Marshal's office, to await the leaving of the train for Atlanta and Jefferson prisons later that night.

When before in the history of any court was a defendant forced to trial when suffering great pain due to injuries received? When before was a reasonable adjournment refused in the United States courts when one of the defendants was only one day out of jail on tremendous bail; and when before has any judge sitting on the criminal side of the United States Court refused a writ of error to a defendant who informs him that an appeal will be taken? The only question has always been the amount of bail. And in this case each defendant had deposited as bail $25,000 cash. Never before in the history of any court were defendants taken from the court straight to jail by the Marshal, when the defendants asked time to consult counsel in reference to an appeal or a stay. The defendants asked a few days to arrange their affairs, which was refused. Both were publishers of magazines and books and had large affairs that had to be taken care of while they were serving the limit of the law. These defendants were, in the eyes of the law, like all other defendants charged with crime, and entitled to all the rights and privileges accorded to all defendants, for the sake of the law and a people's belief in its unvarying action.

All this, and the refusing of an adjournment at the commencement of the trial, though defendant Berkman, just one day out jail on $25,000 bail, and suffering great pain, though it may not be strictly legal error, gives a better picture of the bitterness and attitude of the Court and its desire for a conviction of the defendants, which, with the war hysteria at the time, meant that no jury could weigh the testimony fairly, and were bound to con-

vict, even without evidence. Perhaps the defendants, as far as the record is concerned, appear to have gotten the letter of the law, but they did not get the spirit—which means justice and a fair trial.

The charge is defendants conspired to advise and to urge men of conscriptable age not to *register*. The overt act charged is speeches and articles.

The Government failed to prove conspiracy.

The Government failed to prove that defendants or either of them told young men of conscription age not to register. No evidence of young men of draft age, who failed to register.

All kinds of evidence was allowed in, happenings of years ago, the defendants' theories and beliefs, but no evidence of the overt acts charged, no evidence of the guilt of any principal. The May 18th meeting and "violence" were paraded before the jury for days. Evidence that the defendants were anarchists, and therefore opposed to all governments, including the United States Government, is admitted, and was proved by the United States District Attorney, and made the most of. That defendants are internationalists, and therefore opposed to all national wars, including this one, is admitted, and was proved by the District Attorney, but those are not the crimes charged against the defendants, that is not how the indictment reads, though that is what they were convicted of, because the attitude of the Court and of the District Attorney, as shown in the record, called for a conviction on "patriotic grounds."

The no-conscription manifesto (Government's Exhibit 1, p. 451) does not tell people not to register, it does oppose conscription. It says, "The No-conscription League is to be the voice of protest against the coercion of conscientious objectors to participate in the war." That was the purpose of

the league, formed before the Draft Law was passed (p. 23).

There was no proof of a conspiracy, because there was none. That the defendants had similar ideas which they expressed on a public question, which they had for the past twenty years, is no proof that they *conspired* to tell young men between the ages of twenty and thirty years, inclusive, not to register. See *U. S.* v. *Donan*, 11 Blatchf. (U. S.), 168, and *U. S.* v. *Goldberg*, 7 Bissell's (U. S.), 175. As a matter of fact, there was no *legal* evidence submitted to the jury that the defendants' speeches or writings reached young men subject to the draft, even if they had told anyone not to register. If defendants had conspired and told an audience of women, "Don't register," could it be contended there was a violation of law? It was incumbent on the Government to submit proof that young men of draft age had been reached by defendants' speeches and articles.

That defendants expressed opinions about conscription and war is admitted, but there was no evidence that they advised people to disobey the law. They strongly disapprove of the law, just as many people disapprove of the income tax, or a hundred different laws and express their opinion of those laws, bring test cases to break those laws, but no one was ever convicted before of the crime of disapproving of laws. What of the men and corporations who strongly disapproved of the first income tax law, and that they brought before this Court, and this Court declared unconstitutional? What of the Eight-hour Law on the railroads, that this Court declared constitutional, and of which many editors and railroad men disapproved and voiced their disapproval. The expression of disapproval is necessary before any law can be changed, before

Congress can know what the people want, but that does not mean that those who express that disapproval are urging people to break or resist the law. Many people to-day are strongly pro-war, and yet disapprove of conscription.

The letter written in Springfield, Mass., by Emma Goldman to the meeting of May 23rd of the league, disposes of the conspiracy charge, disposes of alleged overt acts to tell people not to register, more than pages of testimony. She says she will not advise young men not to register. Does that not dispose of the whole case? At the Hunt's Point meeting Emma Goldman expressly stated that she cannot and would not tell people not to register.

These defendants are not the kind of defendants who, when brought before the Bar, deny their beliefs merely because they may go to jail. Their letter to Assistant District Attorney Content (Government's Exhibit 35, p. 499) protesting against the arrest and imprisoning of Kramer and Becker shows that they do not shirk responsibility, they do not deny their position on public questions. The reputation of the defendants, whether the Court believes it enviable or unenviable, is too well known to believe they would deny their principles and preachings for a minute. But even anarchists can consistently fight the charge of an imaginary crime, with imaginary evidence, and they should not seek justice in vain.

One must know the ideals of these people. Frankly they will not obey a law if it interferes with their ideals or their conscience. Frankly they have advocated their principles for years, as shown, for instance, Exhibits B-C, published 1909-1910 (p. 524), entitled "A New Declaration of Independence." But that very principle of ideals and conscience above law explains why defendants would not tell others not to register because, defendants

not being of registration age, the ones who followed their advice, if given, would have to suffer the penalty of the law.

To understand how this conviction of these defendants were had, with no evidence of an agreement to conspire, with no evidence of an overt act to tell *anyone* not to register on June 5th, and absolutely no legal proof of the defendants' speeches or their articles having reached young men between the ages of twenty-one to thirty inclusive, or that any young man subject to draft did refuse to register on account of defendants, one must picture the scene of the trial. A Judge presiding at the trial who had already held the defendants in the astounding sum of Twenty-five thousand ($25,000) dollars bail each for trial, which had to be put up in cash, every surety company refusing to go bail; who when the case was called for trial refused even a reasonable adjournment, though defendant Berkman was only one day out of jail, and suffering great pain at the time because of his leg (p. 11), and defendant Goldman had been out less than a week, during all of which time she had tried to raise cash bail for Berkman (pp. 7 and 8). Then, as this record of the trial is read, the questions asked by the Judge of witness after witness, when he believes the prosecutor has been weak in his examination and cross-examination the remarks and the objections of the District Attorney continually echoed by the Court, the feeling in the court room that a conviction must be obtained is realized. As illuminating as is the refusal of the Court to give the defendants a reasonable adjournment at the beginning of the trial, more illuminating of the attitude of the Court throughout the trial was the refusal of a few days' stay before the sending of the defendants out of the State to commence the service of their sentence,

which was the full extent of the law. All of this may not be judicial error (see *Goldsby* v. *U. S.*, 160 U. S., 70; *Isaacs* v. *U. S.*, 159 U. S., 487), but it makes the examining closely of the facts absolutely necessary, to see if an injustice has been done in the conviction. The non-acceptance by the Court of the philosophy of the defendants makes the necessity of doing them justice all the more necessary. Because, if there was no prejudice against defendants, if there was no war hysteria at the time of the trial, there would probably have been no conviction to appeal to this Court.

The crime charged against the defendants is that they conspired to advise and did advise young men, who were subject to draft, not to register, and that said young men did not register.

It has been uniformly held that defendants can only be convicted of the crime charged.

In *United States* v. *Cruikshank*, 92 U. S., 542, this Court said:

> "In criminal cases, prosecuted under the laws of the United States, the accused has the constitutional right 'to be informed of the nature and cause of the accusation.' Amend. VI. In *United States* v. *Mills*, 7 Pet., 142, this was construed to mean, that the indictment must set forth the offense 'with clearness and all necessary certainty, to apprise the accused of the crime with which he stands charged' * * *.
>
> The object of the indictment is, first, to furnish the accused with such a description of the charge against him as will enable him to make his defense, * * *; and, second, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had. For this, facts are to be stated, not conclusions of law alone. A crime is made up of acts and intents; and

> these must be set forth in the indictment, with reasonable particularity of time, place, and circumstances."

The facts charged were not proved. There is no legal evidence in the whole record that young men of draft age heard defendants or received their literature. This Court cannot speculate that there were young men, no more than the jury had the right to. Suppose defendants had actually said "Don't register" and had said it to an audience of women; would that be a violation of law, even if they had conspired to say it? They would not. See *United States* v. *Cruikshank, supra.* The prosecution had the duty under the indictment and the law to show that people who were advised, aided or abetted were subject to draft, and it had to show it by legal evidence. It had in addition, as defendants were charged as principals, to show some young man of draft age who actually did not register because of defendants' speeches or articles, and no proof was offered, and not even charged in the indictment, that any did fail to actually register.

The law of conspiracy is elementary and needs no citations to this Court. I submit that under the law of conspiracy, two defendants who expressed the same ideas at a meeting or wrote for two different magazines would not be guilty of conspiracy, no more than two Republican or two Democratic speakers or two editors expressing the same ideas would be guilty of conspiracy.

The more wrong the defendants may be considered in their beliefs and in their philosophy of life by the courts, the more sure the courts should be that they had a fair trial and that their conviction now before this Court was not obtained without evidence and merely by prejudice created inside and outside the court room.

Even the least among us are entitled to justice.

POINT III.

The Draft Act is unconstitutional.

A. It violates Section XIII, Subdivision 1 of the Amendments of the United States Constitution:

> **"Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."**

By registering, according to a proclamation of General Crowder, all men between the ages of twenty-one to thirty inclusive become immediately soldiers of the United States—not by enlistment, not by being mustered in, but by the mere act of signing their name, subject to be court-martialed and shot if they should fail afterwards to appear for physical examination and enrollment. *They must then obey military orders to serve at home or abroad.* They may, according to proclamations of the President and the new rules of the War Department, become liable to be assigned to duty at manual labor in mines, factories and fields (see also Section 4 of Draft Act).

Appreciating the importance of this question, its relation to the fundamental principles of American liberty, and the necessities of the National Government, it is not my contention nor belief that a soldier is a slave. A volunteer soldier is a free man fighting for what he believes. But where he does not volunteer for service in the United States army, the conscripting him is involuntary servitude, if the English language means anything. If the conscript is forced into military, agricultural, industrial or mining work—as the Government proclaims it intends to do—that is clearly involuntary servitude.

Millions of young men have complied with the rigid conscription law; many have done so unwillingly, some only after protest, some have obeyed only under threat of arms, others have altogether refused, many have claimed exemption. Only those that have offered some sort of protest have expressed themselves as to the value and validity of military service. The others have merely obeyed the law as written. Their action in registering can hardly indicate an opinion with regard to conscription. The attempt to make it appear an endorsement of any national military policy is either due to lack of logic or a desire to misrepresent the attitude of those called upon to comply with it.

Conscripted, many unwilling, but we are a law-abiding people, and obey the law, until this Court, if it shall so decide, shall declare it unconstitutional.

To prevent usurpation and despotism by the executive power has always been the task of liberty-loving people, and that is why we have checks and balances in our Constitution.

Public interests and private rights, the liberty of the citizens and the power of government is all entwined in this case.

The words of Section XIII of the amendments are plain and determinate, clear and the sense distinct and perfect, and they require no interpretation or construction. The words are to be taken in the sense which they naturally bear on their face.

> *United States* v. *Fisher,* 2 Cranch., 386.
> *Lake* v. *Rollins,* 130 U. S., 662.
> *Doggett* v. *Florida R. Co.,* 99 U. S., 72.

In the *Slaughter House* cases, 16 Wallace, at page 69, the Court said:

"Its two short sections (13th Amendment) seem hardly to admit of construction, so vigorous is their expression and so appropriate to the purpose we have indicated:

1. * * * this grand yet simple declaration of the personal freedom of all the human race within the jurisdiction of this government—a declaration designed to establish the freedom of four millions of slaves * * *. That a personal servitude was meant, is proved by the use of the word 'involuntary,' which can only apply to human beings. The exception of servitude as a punishment for crime gives an idea of the class of servitude that is meant. The word 'servitude' is of larger meaning than slavery, as the latter is popularly understood in this country, and the obvious purpose was to forbid all shades and conditions of African slavery. * * *

We do not say that no one else but the negro can share in this protection. Both the language and spirit of these articles are to have their fair and just weight in any question of construction; undoubtedly, while negro slavery alone was in the mind of the Congress which proposed the thirteenth article, it forbids any other kind of slavery, now or hereafter. If Mexican peonage or the Chinese coolie labor system shall develop slavery of the Mexican or Chinese race within our territory, this amendment may safely be trusted to make it void. And so, if other rights are assailed by the States which properly and necessarily fall within the protection of these articles, that protection will apply though the party interested may not be of African descent."

In *Barley* v. *Alabama*, 219 U. S., 219, 240, Mr. Justice Hughes said:

"The language of the Thirteenth Amendment was not new. It reproduced the historic words of the ordinance of 1787 for the government of the Northwest Territory and

gave them unrestricted application within the United States and all places subject to their jurisdiction. While the immediate concern was with African slavery, the Amendment was not limited to that. *It was a charter of universal civil freedom for all persons, of whatever race, color or estate, under the flag.*

The words 'involuntary servitude' have a 'larger meaning than slavery.' 'It was very well understood that in the form of apprenticeship for long terms, as it had been practised in the West Indies Islands, on the abolition of slavery by the English government, or by reducing the slaves to the condition of serfs attached to the plantation, the purpose of the article might have been evaded, if only the word slavery had been used.' *Slaughter House* Cases, 16 Wall., p. 69. The plain intention was to abolish slavery of whatever name and form and all its badges and incidents; to render impossible any state of bondage; to make labor free, by prohibiting that control by which the personal service of one man is disposed of or coerced for another's benefit, which is the essence of involuntary servitude."

It forbids not merely the slavery heretofore known to our laws, but all kinds of involuntary servitude not imposed in punishment for public offenses.

Matter of Turner, 1 Abb. U. S. R., 84.

In *Robertson* v. *Baldwin*, 165 U. S., at page 281, the Court said:

"Not that all such contracts (or servitude of a sailor or soldier) would be lawful, but that *a servitude which was knowingly and willingly entered into could not be termed involuntary.* * * * From the earliest historical period the *contract* of the sailor has

> been treated as an exceptional one, and involving, to a certain extent, *the surrender of his personal liberty during the life of the contract.*"

But if it had been shown that the contract of servitude had not been voluntarily entered into (whether of soldier or sailor) according to the reasoning of the Court, the sailor or soldier would have been entitled to release on writ of *habeas corpus.*

Justice Harlan wrote a strong dissenting opinion, and with all due respect to this Court, in my opinion the majority were wrong in not construing that seamen were protected by the Thirteenth Amendment, though they did have ancient law and custom to sustain their decision. Justice Harlan well said:

> "Those (ancient) laws, whatever they may have been, were enacted at a time when no account was taken of man as man, when human life and human liberty were regarded as of little value, and when the powers of government were employed to gratify the ambition and the pleasures of despotic rulers rather than promote the welfare of the people."

But even the majority opinion refers to "a servitude which was knowingly and willingly entered into could not be termed involuntary." But there can be no claim that the drafted men voluntarily enter the army. Therefore, it would be involuntary servitude even according to the majority decision of this Court in this case. Congress has since passed the Seamen's Act, which has removed the injustice of this decision.

The word "servitude" was not an unknown word in 1865. *Reeves History of English Law,* Pt. 1, C. 1:

> "These are the persons who are described by Sir William Temple as 'a sort of people

> who were in a condition of downright servitude, used and employed in the most servile works; and belonging, they and their children and effects, to the lord of the soil, like the rest of the stock or cattle upon it.' "

In 1514 Henry VIII manumitted two of his villeins in the following words:

> "Whereas God created all men free, but afterwards the laws and customs of nations subjected some under the yoke of servitude, etc." (*Barrington on Statutes*, 3rd Ed., 275).

The word "servitude" as used in the Constitution of the United States, Amendment Thirteen, means a condition of enforced compulsory service of one to another; "servitude" being defined by Webster as "the state of voluntary or compulsory subjection to a master."

> *Hodges* v. *United States*, 203 U. S., 1, 17; 51 L. Ed., 65.

Bouvier's Law Dictionary defines "Involuntary":

> "An involuntary act is that which is performed with constraint or with repugnance, or without the will to do it. An action is involuntary which is performed under duress. Wolffins Inst., Section 5."

Black's Law Dictionary defines

> "Involuntary servitude. The condition of one who is compelled by force, coercion or imprisonment, and against his will, to labor for another, whether he is paid or not" (citing cases).

Blackstone, 1 Bl. Com., 134, said:

> "Personal liberty consists in the power of locomotion, of changing situation, or moving one's person to whatsoever place one's

> own inclination may direct, without imprisonment or restraint, unless by due course of law."

The meaning of the word servitude as contended for here is not new.

The Century Dictionary defines

> "Servitude: Service rendered or duty performed in the army or navy. A state of spiritual, moral, or mental bondage or subjection; compulsion; subordination.
>
> Involuntary. Not voluntary or willing: contrary or opposed to will or desire; unwilling."

Funk & Wagnall's Standard Dictionary also defines servitude as "service in the army or navy."

The New English Dictionary, edited by Sir James A. H. Murray, Oxford, 1914, defines servitude:

"The absence of personal freedom. A person's (period of) service (in the Navy)."

1471 Caxton Recuyell (Sommer) II. 611 or that we shall be ledde in seruytude & bondage in to strange contreyes.

1776 Gibbon Decl. & F: XIII. I. 270. The greatest part of the nation was gradually reduced into a state of servitude.

1845 Sarah Austin Ranke's Hist. Ref. IV., IV. II. 457. It enabled them to reduce the peasantry to a still harder state of servitude.

1862 Buckle Civiliz. III. IV. (1869) 192. The religious servitude into which the Scotch fell * * * was a willing servitude.

1818 Tuckey's Narr. Exped. R. Zaire Introd. p. XIIX. Though wanting eighteen months for the completion of his servitude to qualify him for a lieutenant's Commission.

1836 Marryat Three Cutters ii, "During my servitude as first lieutenant."

Australia had her people vote on conscription and it was rejected. Canada, after more than three years of war, voted for conscription, but did not let the people vote upon the question, and it is now being debated before the people. England raised four million volunteers before conscription was passed, and her Parliament is not limited by a constitution. Even despotic Germany when she sent soldiers to suppress the Boxer Rebellion in 1900 sent volunteers (Reichstag Report, Vol. 1, pp. 225-228), and her colonial troops can only be enlisted for overseas service upon their voluntary application (Sec. 2, Law of July 5, 1896, R. G. P. 1, p. 653; also Act of July 25, 1898, amended August, 1908, and in force at the outbreak of the European War). But we in the first days of the war, without thought of the spirit of our institutions or the specific prohibition contained in the Thirteenth Amendment to the Constitution, institute conscription for oversea service at once.

The story of despotism is always quite the same. The absence of understanding, or appreciation, of liberty on the part of the masses and the natural lust for power, which makes every human a potential tyrant, makes him indifferent to all tyranny which does not directly affect him. The initial exercise of tyrannical power always has to do with subjects as to which there is great public indifference, or a quite general approval, at least, of a sentimental sort. The populace thus accustomed to the exercise of tyrannous authority doze on with the delusion of liberty secure, while the lust for power induces officials to extend their authoritarian might from one subject to another, until in the end the masses awake to find they possess all their liberties only as tenants at will of masters whom they thought servants of their own creation.

Herbert Spencer's definition of liberty is:

> "Every man has freedom to do all that he wills, provided he infringes not the equal freedom of any other man."

B. **It violates Article I of the Amendments of the United States Constitution, which reads as follows:**

> **"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; * * *."**

And if this law is constitutional, the Court will add: "Except when the Government desires to conscript."

The Draft Act, Section 7, Subdivision 4, exempts

> "regular or duly ordained ministers of religion, students * * * preparing for the ministry in recognized theological or divinity schools, * * * and nothing in this Act contained shall be construed to require or compel any person to serve in any of the forces herein provided for who is found to be a member of any well-recognized religious sect or organization at present organized and existing and whose existing creed or principles forbid its members to participate in war in any form and whose religious convictions are against war or participation therein in accordance with the creed or principles of said religious organizations."

We contend that this clause establishes a religion or prohibits the free exercise thereof and is a new combination of church and state.

Story on the Const., Section 454, says:

> "* * * Congress shall make no law respecting an establishment of religion which seems to

> prohibit any laws which shall *recognize*, found, confirm, or *patronize* any particular religion, or form of religion, whether permanent or temporary, whether already existing or to arise in future. In this clause establishment seems equivalent in meaning to settlement, *recognition* or *support*."

Sixth article, Subd. 3rd of the Constitution:

> "But no religious test shall ever be required as a qualification to any office or public trust under the United States."

This clause respecting the elimination of a religious test was unanimously adopted (*Journal of Convention*, p. 313). *Story on the Constitution*, Book II, p. 615, Sec. 1847, says:

> "This clause is not introduced merely for the purpose of satisfying the scruples of many respectable persons who feel an invincible repugnance to any religious test or affirmation. *It had a higher object—to cut off forever every pretence of any alliance between Church and State in the national government.* The framers of the Constitution were fully sensible of the dangers from this source marked out in the history of other ages and countries, and not wholly unknown to our own. They knew that bigotry was unceasingly vigilant in its stratagems to secure to itself an exclusive ascendancy over the human, and that intolerance was ever ready to arm itself with all the terrors of the civil power to exterminate those who doubted its dogmas or resisted its infallibility."

The history of England and all European countries and the early days of our own country showed to the makers of our Constitution the importance of this clause. It was to exclude all

rivalry for the control of the Government by any church.

For the first time in our national history the nation holds an inquisition into a man's faith or his mode of worship or the church he attends, and imposes duties or grants exemptions accordingly.

Cooley Const. Lim., p. 659:

> "A careful examination of the American constitution will disclose the fact that nothing is more fully set forth or more plainly expressed than the determination of their authors to preserve and perpetuate religious liberty, and *to guard against the slightest approach towards the establishment of an inequality in the civil and political rights of citizens, which shall have for its basis only their differences of religious belief.* The American people came to the work of framing their fundamental laws, after centuries of religious suppression and persecution, sometimes by one party or sect and sometimes by another, had taught them the utter futility of all attempts to propagate religious opinions by rewards, penalties or terrors of human laws."

And at page 663:

> *"Whatever establishes a distinction against one class or sect is, to the extent to which the distinction operates unfavorably, a persecution; and if based on religious grounds a religious persecution. The extent of the discrimination is not material to the principle; it is enough that it creates an inequality of right or privilege."*

In *Reynolds* v. *United States*, 98 U. S., 145, 162, Chief Justice Waite said:

> "Religious freedom is guaranteed everywhere throughout the United States, so far as congressional interference is concerned.

> The word 'religion' is not defined in the constitution. We must go elsewhere, therefore, to ascertain its meanings, and nowhere more appropriately, we think, than to the history of the times in the midst of which the provision was adopted. The precise point of the inquiry is, what is the religious freedom which has been guaranteed.
>
> Before the adoption of the Constitution, attempts were made in some of the colonies and states to legislate not only in respect to the establishment of religion, but in respect to its doctrines and precepts as well. The people were taxed, against their will, for the support of religion, and sometimes for the support of particular sects to whose tenets they could not and did not subscribe. Punishments were prescribed for a failure to attend upon public worship, and sometimes for entertaining heretical opinions. The controversy upon this general subject was animated in many of the states, but seemed at last to culminate in Virginia."

The opinion then gives a history of the struggle in Virginia in 1784 for religious liberty and the passing of a bill drafted by Thomas Jefferson "for establishing religious freedom." The Court then quotes from an address by Mr. Jefferson "Believing with you that religion is a matter which lies solely between man and his God; that he owes account to none other for his faith or his worship."

In *Davis* v. *Beason*, 133 U. S., at p. 342, the Court said:

> "The first amendment to the Constitution, in declaring that congress shall make no law respecting the establishment of religion, or forbidding the free exercise thereof, was intended to allow everyone under the jurisdiction of the United States to entertain such notions respecting his relations to his Maker and the duties they impose as may be ap-

> proved by his judgment and conscience, and to exhibit his sentiments in such form of worship as he may think proper, not injurious to the equal rights of others, and to prohibit legislation for the support of any religious tenets, or the modes of worship of any sect."

The old combination of church and state was not only an official state church, but the granting of special privileges to churches or to ministers. The case of *Mormon Church* v. *United States*, 136 U. S., 1, reviews the history of many different forms of combination of church and state.

In England the "right of clergy" exempted clergymen or those who could read and write from prosecution for crime by the civil authorities. At other times in the history of the combination of church and state, the churches were entitled to a percentage of the produce of the people. Its manifestations were many and various, in this country in the early days, as well as in Europe.

See:

> *Jefferson Works*, I, 38.
> *Life of Madison*, by Reeves, I, 42.
> *Terreti* v. *Taylor*, 9 Cranch., 43.

Different religions, as far as this Government is concerned, does not or should not exist. Congress has no power to foster and aid well-recognized churches or sects.

2 *American Museum*, 552 (1787), from the address and reasons of dissent of the minority of the Convention of the State of Pennsylvania, to the adopting of the Constitution, to their constituents, offer the following propositions to the convention:

"Secondly: The rights of conscience may be violate: as there is no exemption of those persons, who are conscientiously scrupulous of bearing arms. These compose a respectable proportion of the community in the State. This is the more remarkable, because, even when the distress of the late war, and the evident disaffection of many citizens of that description, inflamed our passions—and when every person who was obliged to risk his own life must have been exasperated against such as on any account kept back from the common danger—yet even then, when outrage and violence might have been expected, the rights of conscience were held sacred.

At this momentous crisis the framers of our State Constitution made the most express and decided declaration and stipulation in favor of the rights of conscience; but now, when no necessity exists, those dearest rights of men are left insecure."

Story on Const., Section 53, said:

"Each sect, as it attained power, exhibited the same unrelenting firmness in putting down its adversaries. * * * There are not wanting on the records of the history of these times abundant proofs, how easily sects, which had borne every human calamity with unshrinking fortitude for conscience' sake, could turn upon their inoffensive, but, in their judgment, erring neighbors with a like infliction of suffering."

In 4 *Elliot's Debates*, page 194, Iredell says:

"Happily, no sect here is supreme to another. As long as this is the case, we shall be free from those persecutions and distractions with which other countries have been turned. If in future Congress shall pass an act concerning religion of the country, it would be an act which they are not author-

> ized to pass by the Constitution, and which the people would not obey."

It is not the religious distinction itself, but the authority that compels it, the danger of this precedent, and the possibility of further religious encroachment that is dangerous. Not when we have a State Church, but now is the time to object.

As Dr. Priestly said:

> "A tax of a penny is a trifle, but a power imposing that tax is never considered as a trifle, because it may imply absolute servitude in all who submit to it."

Opposition to war or to combatant service need not be a tenet of the minister of religion or of the students preparing for the ministry for them to get exemption. They may believe in wading in the blood of their enemies, but they are exempted from military service.

You may have two persons of exactly the same religious conviction of opposition to participating in war in any form. They may believe firmly, "Thou shalt not kill." Both of them may be equally honest; both may be equally moral; both derive their convictions from the same source, their conscience; but one of them belongs to a certain particular sect and the other does not. The one who belongs to the well-recognized religious sect is exempted from the duty of engaging in the combatant service of the war if those are its principles, and the other, for his honest conviction, because he refused to serve, is made a felon and subjected to severe penalties. If this is not making a law "respecting an establishment of religion" and "prohibiting the free exercise thereof," "establishing inequality" and "making religious distinctions," no such law can be devised.

The Court cannot strike out the exemptions and itself remodel the act so as to make it uniform. It is not within the judicial province to make a new law. If these exemptions had not been made, the law might never have been passed. The Court will not strike out these exceptions and exemptions so as to give the act an operation which Congress confessedly never meant. If you annul the exemptions, what warrant of law would exist for drafting those exempted? As Mr. Justice Matthews said in the case of *Spraigue* v. *Thompson*, 118 U. S., 90, 95, delivering the opinion of the whole Court, this would confer

> "upon the statute a positive operation beyond the legislative intent, and beyond what anyone can say it would have enacted in view of the illegality of the exceptions."

Would Congress have passed a law drafting ministers?

Where unconstitutional purposes are completely mingled with what alone would be proper, the whole must be rejected.

Allen v. *Louisiana*, 103 U. S., 80.

C. The Draft Act violates Article I of the United States Constitution, Section 8, Subdivisions 15 and 16:

> **"The Congress shall have power—**
>
> **15. To provide for calling forth the Militia, to execute the laws of the Union, suppress Insurrections and repel Invasions;**
>
> **16. To provide for organizing, arming, and disciplining the Militia, and for governing such part of them as may be employed in the service of the United States, reserving**

to the States respectively the appointment of the officers and the authority of training the Militia according to the discipline prescribed by Congress."

As Story, Section 1897, says:

> "The militia is the natural defense of a free country against sudden foreign invasions, domestic insurrections, and domestic usurpations of powers by rulers."

In *Houston* v. *Moore*, 5 Wheat., 1, 48 (1820), Mr. Justice Story said:

> *"Nor ought any power to be sought, much less to be adjudged, in favor of the United States, unless it be clearly within the reach of its constitutional charter. Sitting here, we are not at liberty to add one jot of power to the national government beyond what the people have granted by the Constitution.*
> * * *
>
> It is almost too plain for argument, that the power here given to Congress over the militia, is of a limited nature, and confined to the objects specified in these classes; and that in all other respects, and for all other purposes, the militia are subject to the control and government of the State authorities. Nor can the reservation to the States of the appointment of the officers and authority of the training the militia according to the discipline prescribed by Congress, be justly considered as weakening this conclusion. That reservation constitutes an exception, merely from the power given to Congress 'to provide for organizing, arming and disciplining the militia'; and is a limitation upon the authority, which would otherwise have devolved upon it, as to the appointment of officers. But the exception from a given power cannot, upon any fair reasoning, be considered as an enumeration of all the powers which belong to the States, over the militia. What those powers are must depend upon their

own constitutions; and what is not taken away by the Constitution of the United States must be considered as retained by the States or the people. The exception, then, ascertains only that Congress have not, and that the States have, the power to appoint the officers of the militia, and to train them according to the discipline prescribed by Congress. * * *

The States in virtue of their sovereignty, possessed general authority over their own militia; and the Constitution carved out of that a specific power in certain enumerated cases."

Judge Washington, at page 15, said:

"* * * What are the powers granted to the general government by the Constitution of the United States over the militia? * * *

The Constitution declares that Congress shall have power to provide for calling forth the militia in three specified cases: for organizing, arming, and disciplining them; and for governing such part of them as may be employed in the service of the United States; reserving to the States, respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress. It is further provided, that the President of the United States shall be commander of the militia, when called into the actual service of the United States."

Judge Johnson, page 38:

"Whenever bodies of militia have been called forth for the purpose of general defense, it is believed that in no instance has it been done otherwise than by requisition, the only mode practised towards the States from the commencement of the Revolution to the present day. * * *." (At p. 46) "I will make one further observation in order to prevent myself from being misunderstood. I

> have observed that the governors of the States, as military commanders, must be considered as subordinate to the President. I do not mean to intimate, nor have I the least idea, that the Act of 1795 gives authority to the President to issue an order to the governor in that capacity. I hold the opinion to be absurd; for he comes not within the idea of a militia officer in the language of that act. If he is so, what is his grade? He will not be included under any title of rank, known to the laws of the United States, from the highest to the lowest. And how is he to be tried? What is his pay? What his punishment? An act which authorizes an order for militia, obviously authorizes a requisition. * * * But the power of ordering out the militia is an alternative given to the President when the other is too circuitous or likely to fail. In that case, the President, may address himself to the executive; and having obtained, through him, the necessary information relative to the distribution and organization of the militia, may proceed, under his own immediate orders, to draft and detach the members wanted."

The Second Amendment to the Constitution,

> "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed,"

is a limitation only upon the power of Congress and the National Government, and not upon that of the states. It was so held by this Court in the case of *United States* v. *Cruikshank*, 92 U. S., 542, 553, in which the Chief Justice, in delivering the judgment of the Court, said that the right of the people to keep and bear arms

> "is not a right granted by the Constitution. Neither is it in any manner dependent upon

that instrument for its existence. The Second Amendment declares that it shall not be infringed; but this, as has been seen, means no more than that it shall not be infringed by Congress. * * *

In 2 *American Museum*, 1787, p. 428, it is said:

"Where objections were being made to the Constitution, in answer to the objection 'that the militia is to be under the immediate command of Congress; and men conscientiously scrupulous of bearing arms may be compelled to perform military duty,' the answer was made: 'Congress may "provide for calling forth the militia," and "may provide for organizing, arming and disciplining it." But the States respectively can only raise it, and they expressly reserve the right of "appointment of officers and of training it." Now we know that men conscientiously scrupulous, by sect or profession, are not forced to bear arms in any of the States, a pecuniary compensation being accepted in lieu of it. Whatever may be my sentiments on the present state of the matter, is foreign to the point: but it is certain that whatever redress may be wished for or expected can only come from the State Legislature, where, and where only, the dispensing power or enforcing power is in the first instance placed'" (Article 1, Section 8).

In *Pollock* v. *Farmers' Loan & Trust Co.*, 157 U. S., 429, 554, Chief Justice Fuller said:

"Since the opinion in *Marbury* v. *Madison*, 1 Cranch., 137, 177, was delivered, it has not been doubted that it is within judicial competency, by express provisions of the Constitution or by necessary inference and implication, to determine whether a given law of the United States is or is not made in pursuance of the Constitution, and to hold it valid or void accordingly. 'If,' said Chief

Justice Marshall, 'both the law and the Constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the Constitution; or conformably to the Constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.' And the Chief Justice added that the doctrine 'that courts must close their eyes on the Constitution, and see only the law,' 'would subvert the very foundation of all written constitutions.' *Necessarily the power to declare a law unconstitional is always exercised with reluctance; but the duty to do so, in a proper case, cannot be declined, and must be discharged in accordance with the deliberate judgment of the tribunal in which the validity of the enactment is directly drawn in question.*"

In *Slaughter House* cases, 164 Wallace, at p. 82, the Court said:

"Under the pressure of all the excited feeling growing out of the war, our statesmen have still believed that the existence of the States with powers for domestic and local government, including the regulation of civil rights—the rights of persons and property—was essential to the perfect working of our complex form of government, and though they have thought proper to impose additional limitations on the States, and to confer additional power on that of the nation.

But whatever fluctuations may be seen in the history of public opinion on this subject during the period of our national existence, we think it will be found that this court, so far as its functions required, has always held with a steady and an even hand the balance between State and Federal power, and we trust that such may continue to be the history of its relation to that sub-

> *ject so long as it shall have duties to perform which demand of it a construction of the constitution, or any of its parts.*"

Chief Justice Bronson, in *Oakley* v. *Aspinwall*, 3 Comst. (N. Y.), 568, said:

> "Believing, as I do, that the success of free institutions depends on a rigid adherence to the fundamental law, I have never yielded to consideration of expediency in expounding it. There is always some plausible reason for the latitudinarian constructions which are resorted to for the purpose of acquiring power, some evil to be avoided, some good to be obtained by pushing the powers of the Government beyond their legitimate boundary. It is by yielding to such influences that Constitutions are gradually undermined, and finally overthrown. My rule has ever been to follow the fundamental law as it is written, regardless of consequences. If the law does not work well, the people can amend it; and inconvenience can be borne long enough to await that process. But if the legislature or the Courts undertake to cure defects, by forced or unnatural construction, they inflict a wound upon the Constitution which nothing can heal. One step taken by the Legislature or the judiciary in enlarging the powers of Government opens the door for another, which will be sure to follow; and so the process goes on until *all* respect for the fundamental law is lost, and the powers of the Government are just what those in authority *please to call them*."

The plea, therefore, of necessity or expediency cannot be taken into consideration in determinating the validity of the statute under examination. The Constitution has created a judicial power in the United States independent in itself, and standing upon the Constitution—whose duty it is to pro-

tect the citizen against unlawful and tyrannical invasions of his private rights.

Story on Const., Sec. 1908:

> "What is to become of constitutions of governments if they are to rest, not upon the plain import of their words, but upon conjectural enlargements and restrictions to suit the temporary passions and interests of the day? Let us never forget that our constitutions of government are solemn instruments, addressed to the common sense of the people, and designed to fix and perpetuate their rights and their liberties. They are not to be frittered away to please the demagogues of the day. They are not to be violated to gratify the ambition of political leaders. *They are to speak in the same voice now and forever.* They are of no man's private interpretation. *They are ordained by the will of the people; and can be changed only by the sovereign command of the people.*"

In *re ex parte Milligan*, 4 Wall, page 125, the Court said:

> "This nation, as experience has proved, cannot always remain at peace, and has no right to expect that it will always have wise and humane rulers, sincerely attached to the principles of the Constitution. Wicked men, ambitious of power, with hatred of liberty and contempt of law, may fill the place once occupied by Washington and Lincoln; and if this right is conceded, and the calamities of war again befall us, the dangers to human liberty are frightful to contemplate. If our fathers had failed to provide for just such a contingency, they would have been false to the trust reposed in them. They knew—the history of the world told them—the nation they were founding, be its existence short or long, would be involved in war; how often or

> how long continued, human foresight could not tell; and that unlimited power, wherever lodged at such time, was especially hazardous to freemen. For this, and other equally weighty reasons, they secured the inheritance they had fought to maintain, by incorporating in a written constitution the safeguards which *time* had proved were essential to its preservation. Not one of these safeguards can the President, or Congress, or the Judiciary disturb, except the one concerning the Writ of *Habeas Corpus*. * * *
>
> It is insisted that the safety of the country in time of war demands that this broad claim for martial law (in this case before this Court conscription) shall be sustained. If this were true, it could be well said that a country, preserved at the sacrifice of all the cardinal principles of liberty, is not worth the cost of preservation. Happily, it is not so."

We can also say, happily, conscription is not necessary in this country. This Court can get the official figures, if necessary, of the number of men in the United States Army and Navy, all volunteers, ready to go anywhere. Happily, we have well organized militia for the repelling of any invasion that may happen. We do not question the high motive of President Wilson and Congress in conscripting, but we do question their power.

In *McCulloch* v. *Maryland*, 4 Wheat., 316, Chief Justice Marshall said:

> "Should congress, under the pretext of executing its powers, pass laws for the accomplishment of objects not entrusted to the government, it would become the painful duty of this tribunal * * * to say that such act was not the law of the land."

Can it be conceived that the people delegated to the Federal Government a right to conscript men,

when never before in the history of England did the government even claim that right or assume that right?

Amendments Article X specifically says:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

How can it be said the United States can take men of a State, when the Constitution only gives it the right to govern, etc., the militia, and call it into service under certain conditions? An affirmative grant of special powers would be absurd, as well as useless, if a general authority were intended and actually given.

Jefferson in 4 *Jefferson Correspondence*, 373, said:

> "On every question we should carry ourselves back to the time when the Constitution was adopted; recollect the spirit manifested in the debates and instead of trying what means may be squeezed out of the context or invented against it conform to the probable one in which it was passed."

The people gave what rights they thought necessary to the common defense, and kept what rights they thought necessary as citizens, from "the rights to keep arms" to the right to have a state militia, which shall be called by the National Government only under certain circumstances, and reserving the right to appoint the officers. No right was ever expressly given to force an individual directly to join the army or navy. The militia could be had only when the necessity mentioned in the Constitution

happened, viz.: execute the laws of the Union, suppress insurrections and repel invasions.

The Federalist XXIX by Hamilton:

> "Concerning the militia.
>
> It is therefore with the most evident propriety (on account of uniformity), that the plan of the convention proposes to empower the union 'to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, *reserving to the states respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.* * * * what reasonable cause of apprehension can be inferred from a power in the union to prescribe regulations for the militia, and to command its services when necessary; while the particular states are to have *the sole and exclusive appointment of the officers?* It were possible seriously to indulge a jealousy of the militia, upon any conceivable establishment under the Federal government, the circumstances of the officers being in the appointment of the states, ought at once to extinguish it. There can be no doubt that this circumstance will always secure to them a preponderating influence over the militia." (The emphasis is Hamilton's.)

The Federalist XLVI, Madison:

> "Let a regular army, fully equipped to the resources of the country, be formed; and let it be entirely at the devotion of the federal government * * *. To these would be opposed a militia amounting to near half a million of citizens with arms in their hands, officered by men chosen from among themselves, etc. * * *"

Always that distinction. Let the Federal army and the State militia apparently be kept distinct, and the officers of the militia to be chosen *not by the Federal Government.*

Fleming v. *Page*, 9 How., p. 615, Chief Justice Taney said:

> "The genius and character of our institutions are peaceful, and the power to declare war was not conferred upon Congress for the purposes of aggression or aggrandizement, but to enable the general government to vindicate by arms, if it should become necessary, its own rights and the rights of its citizens. * * *"

And that is why military limitations were placed on Congress, not to allow aggression.

In *Martin* v. *Mott*, 12 Wheat., 29 (1822), Judge Story said:

> "The power thus confided by Congress (to call the militia) to the President, is, doubtless of a very high and delicate nature. A free people are naturally jealous of the exercise of military power; and the power to call the militia into actual service is certainly felt to be one of no ordinary magnitude. But it is not a power which can be executed without a correspondent responsibility. It is, in its terms, a limited power, confined to cases of actual invasion, or of imminent danger of invasion."

John Marshall, 3 *Elliot's Debates*, 419, said:

> "The State Governments did not derive their powers from the General Government; but each Government derived its powers from the people and each was to act according to the powers given it. Would any gentleman deny this? He demanded if

powers not given were retained by implication. Could any man say so? Could any man say that this power was not retained by the States, as they had not given it away? For, says he, does not a power remain till it is given away? The State Legislatures had power to command and govern their militia before, and have it still, undeniable, unless there be something in this Constitution that takes it away. *For continental purposes Congress may call forth the militia—as to suppress insurrections and repel invasions.* But the power given to the States by the people is not taken away; for the Constitution does not say so. In the Confederation Congress had this power; but the State Legislatures had it also. * * * The truth is, that when power is given to the General Legislature, if it was in the State Legislature before, both exercise it; unless there be an incompatibility in the exercise by one to that by the other, or negative words precluding the State Governments from it. But there are no negative words here. It rests, therefore, with the States. To me it appears, then, unquestionably that the State Governments can call forth the militia, in case the Constitution should be adopted in the same manner, as they could have done before its adoption. * * * I will show that there could not be a combination, between those who formed the Constitution, to take away this power. All the restraints intended to be laid on the State Governments (besides where an exclusive power is expressly given to Congress) are contained in the tenth section of the First Article. This power is not included in the restrictions in that section. But what excludes every possibility of doubt is the last part of it—that 'no State shall engage in war, unless actually invaded, or in such imminent danger as will not admit of delay. When invaded, they can engage in war, as also when in imminent danger.' This clearly proves that the States can use the

> militia when they find it necessary. * * * He then concluded by observing that the power of governing the militia was not vested in the States by implication, because, being possessed of it antecedent to the adoption of the Government, and not being divested of it by any grant or restriction in the Constitution, they must necessarily be as fully possessed of it as ever they had been. And it could not be said that the States derived any powers from that system, but retained them, though not acknowledged in any part of it."

Governor Randolph of Virginia, 3 *Elliot's Debates*, page 400, says:

> "They (the militia) are only to be called out in three cases, and only to be governed by the authority of Congress when in the actual service of the United States; so that their articles of war can no longer operate upon them than when in the actual service of the Union."

Cannot imply powers where specific powers granted.

The Federalist, XXXII, Hamilton:

> "* * * the state governments would clearly retain all the rights of sovereignty which they before had, and which were not, by that act, *exclusively* delegated to the United States. This exclusive delegation, or rather this alienation of State sovereignty would only exist in three cases: where the constitution in express terms granted an exclusive authority to the union; where it granted, in one instance, an authority to the union; and in another, prohibited the States from exercising the like authority; and where it granted an authority to the union, to which a similar authority in the states would be absolutely and totally *contradictory* and *repugnant*."

Nowhere in the Constitutional Convention was conscription ever suggested, mentioned or debated, and Hamilton in all his dreams of a monarchy never thought of that method to establish the next best thing, a strongly centralized government supported by conscripted soldiers, and Hamilton is considered one of the chief authoritative expounders of the Constitution.

Armies were raised under the articles of Confederation merely by requisitions upon the States for quotas of men, and the States raised them by paying bounties to volunteers (Federalist, XXII, Hamilton; see also Memoirs R. H. Lee, Vol. 1, p. 195). Surely Hamilton and Jefferson and the other men who wrote the Constitution, and immediately acted under it, could say what powers over the militia and the army and the States were given to the Federal Government, for they could well use the words quoted in *Steinfeld* v. *Zeckendorf*, 239 U. S., 26: "We know it better than you, for we made it."

In *Ex parte Milligan*, 4 Wall., at page 119, the Court said:

> "Precedents inform us of the extent of the struggle to preserve liberty and to relieve those in civil life from military trials. The founders of our government were familiar with the history of that struggle; and secured in a written constitution every right which the people had wrested from power during a contest of ages. *By that constitution and the laws authorized by it this question must be determined.*"

So say we. The men who made the Constitution were familiar with Blackstone. They understood the English language. The style and clearness of the language of the Constitution is remarkable

There are fewer phrases in it, probably, that are capable of different construction and equivocal interpretations than almost any other legal document that has come before this Court. It therefore does not do to say that they put words into the Constitution without consideration, and without intellectual and industrious selection of the terms which they intended to use, and without intending the clear and definite meaning that the universal practice of mankind at that time imputed to them.

In 4 *Elliot's Debates*, page 459, in a discussion had in the House of Representatives January 12th, 1812, between Mr. Poindexter, Mr. Grundy and Mr. Clay, as to whether the President had the power to employ volunteer militia without the jurisdiction of the United States, Mr. Grundy said he had always understood that in framing the Constitution of this Government there was great jealousy exhibited lest the general government should swallow up the powers of the State governments; and when the power of making war and raising armies was given to Congress, the militia was retained by the States except in cases mentioned by the Constitution.

In a discussion, House of Representatives, December 22nd, 1790, reported in 4 *Elliot's Debates*, 424, in a debate on the militia bill before Congress, Mr. Jackson (a gentleman of superior talents, who had been an active member of the Federal Convention in framing the general Constitution and later one of the Judges of the Supreme Court of the United States; who was likewise a member of the late convention of Pennsylvania; and it is in evidence that he gave his assent to the present Constitution of that State, one article of which declared that persons conscientiously scrupulous of bearing arms shall be exempt from performing militia duty, upon the condition of their paying an equivalent):

> "Is not this a declaration of the sense of the people of Pennsylvania, that they, and they only, had the right to determine exemptions so far as relates to their own citizens? And it is observable that this Constitution has been framed whilst the Federal Government was in full operation. If this privilege belongs to the State, as they have declared it does, why shall Congress attempt to wrest it from them? * * * certainly such conduct must excite alarm and occasion no inconsiderable degree of jealousy. These circumstances and considerations are forcible argument with me to desist."

Mr. Rutherford, House of Representatives, December, 1796, 4 *Elliot's Debates*, 438, said:

> "He believed the Government of the United States had nothing to do with the militia of the several sovereign States. This was his opinion, and it was the opinion of the people at large * * * however, of nine-tenths of them. The Constitution is express upon this subject. It says, when the militia is called into actual service, it shall be under the direction of the general Government, but not until that takes place; the several States shall have command over their own children—their own families. If the United States take it up, they will defeat the end in view—they grasp too much."

Story on the Constitution, Section 462:

> "The preamble never can be resorted to to enlarge the powers confided to the general government or any of its departments. It cannot confer any power *per se;* it can never amount by implication, to an enlargement of any power expressly given. It can never be the legitimate source of any implied power, when otherwise withdrawn from the Constitution. Its true office is to expound the nature and extent and application of the pow-

> ers actually conferred by the Constitution and not substantially to create them. For example, the preamble declares one object to be, 'to provide for the common defense.' No one can doubt that this does not enlarge the powers of Congress to pass any measure which they may deem useful for the common defense." (Yet, strangely enough, this objection was urged very strenuously against the adoption of the Constitution, 1 *Elliot's Debates*, 293.) "But suppose the terms of a given power admit of two constructions, the one more restrictive, the other more liberal, and each of them is consistent with the words, but is and ought to be, governed by the intent of the power; if one would promote and the other defeat the common defense, ought not the former, upon the soundest principles of interpretation to be adopted?"

In 2 *Elliot's Debates*, page 97, Mr. Sedgwick says:

> "Is it possible to ask that an army can be raised for the purpose of enslaving themselves and their brethren? Or, if raised whether they could subdue a nation of free men, who know how to prize liberty and who have *arms in their hands?*"

A former Justice of this court called our Constitution "A Fighting Constitution." Yes it is, but a Constitution which says specifically how the fighting shall be done under it and how the forces shall be raised to fight.

Statesmen say that conscription is necessary to show that we are an efficient democracy. But if there are two ways of being efficient, one pointed out by the Constitution and another unauthorized and autocratic, why must the unauthorized and autocratic be selected? It is also said that it might happen that an army could not be raised by volun-

tary enlistment, in which case the power to raise an army would be granted in vain, unless they might be raised by compulsion. If this reasoning could prove anything it would equally show that whenever the legitimate powers of the Constitution should be so badly administered as to cease to answer the great ends intended by them, such new powers may be assumed or usurped, as any existing administration may deem expedient. If it is to be assumed that all powers were granted which might by possibility become necessary, and that Government itself is the judge of this possible necessity, then the powers of the Government are precisely what it chooses they should be.

Debates in the Federal Convention, 5 *Elliot's Debates,* 480, Mr. Sherman moved to amend the clause, giving the Executive the command of the militia, so as to read:

> "And of the militia of the several States, *when called into the actual service of the United States.*"

Six States voted aye, two voted no and three absents.

Debates in the Federal Convention, 5 *Elliot's Debates,* 443, Mr. Ellsworth:

> "It must be vain to ask the States to give the militia out of their hands."

Others expressed the fear of giving full power to the general Government over the militia (5 *Elliot's Debates,* pp. 444, 445, 451-464; also 465, 466; see especially p. 461).

The Constitution was a matter of compromise in many respects. Some wanted a strong centralized

government; others a weak centralized government. The States were jealous of their powers.

Jefferson is alleged to have drafted a conscription law for Virginia. How does that prove that he was of the opinion that the United States had the right to conscript men directly? Jefferson considered among instruments dangerous to the national government a standing army. What would Jefferson have said of the power of the United States to raise a standing army by conscription? To raise an army, if necessary, in war time as well as peace time, of all able bodied men in the United States, wiping out the State militia by taking all the men capable of bearing arms into the United States army and keeping that as a standing army.

Von Holst's Constitutional History of the United States, 1750-1832, pp. 243, 244, 245, gives the history of the denial by the New England States of the power to call forth the militia or to send it outside the border, which question as to who had the authority was finally decided by the Supreme Court in *Martin* v. *Mott*, 12 Wheat., p. 30.

As stated recently by Chief Justice White, in *H. Snowden Marshall* v. *Robert B. Gordan*, U. S. Supreme Court, April 23, 1917:

> "Undoubtedly what went before the adoption of the constitution may be resorted to for the purpose of throwing light on its provisions."

The Supreme Court of the United States, in the case of *Martin* v. *Hunter*, 1 Wheat., R., 304, 325, said:

> "The constitution of the United States was ordained and established, not by the States in their sovereign capacities, but emphatically as the preamble of the Constitution de-

> clares, by 'the people of the United States.' There can be no doubt that it was competent for the people to invest the general Government with all the powers which they might deem proper and necessary; to extend or restrain those powers according to their own good pleasure, and to give them a paramount and supreme authority."

The IX amendments to the Constitution declares that:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people."

Another rule of importance is not to enlarge the construction of a given power beyond the fair scope of its terms merely because the restriction is inconvenient or impolitic (*United States* v. *Fisher*, 2 Cranch., 358, S. C. Peters Cond. R., 421), because it should never be lost sight of that the Government of the United States is one of limited and enumerated powers; and that a departure from the true import and sense of its powers is, *pro tanto*, the establishment of a new Constitution. It was doing for the people what they have not chosen to do for themselves.

In *Sturges* v. *Crowninshield*, 4 Wheat., 193, the Chief Justice of the United States observed that the powers of the States remain after the adoption of the Constitution of what they were before except so far as they had been abridged by that instrument. The mere grant of a power to Congress did not imply a prohibition on the States to exercise the same power.

Under the clause granting Congress the power "to provide for, organizing, arming and disciplining the militia and for governing such part of them

as may be employed in the service of the United States reserving to the States respectively the appointment of the officers and the authority of training the militia according to the discipline prescribed by Congress," it has been held that where Congress does not exercise this power by acting under it the power is concurrent in the States; and that under such circumstances they might act to the utmost extent of sovereignity.

Houston v. *Moore*, 5 Wheat., 1.
Story on the Constitution, Section 1209, and cases cited.

Has Congress the express power or a clear incidental power to resort to conscription for the purpose of replenishing or increasing the regular army? Congress cannot do everything that it may believe for the best interest of the Union. It cannot, for instance, conscript soldiers and quarter them in private houses in times of peace, as well as war. Congress is not the ultimate judge of the extent of its own power. The glory of our institutions is that its acts are subject to review and may be declared void by this Court.

The important reservation of the appointment of all officers and the training of the militia to the States in express terms and the care with which the exigencies were defined in which the militia could be called out shows the jealousy of the framers of the Government of the United States of Federal power. The Governor is Commander-in-Chief of the militia, and the President is under certain specified circumstances made Commander-in-Chief by the following provision: "The President shall be Commander-in-Chief of the army and navy of the United States and of the militia of the several States when called into the actual service of the

United States." The Constitution with the precision which generally characterizes that instrument speaks of the "army and navy of the United States and the militia of the several States." No other militia is known to the Constitution. This clause also draws a wide distinction between the army (regular army) of the United States that is raised by voluntary enlistment and the militia of the several States when called into the actual service of the United States. The President of the United States shall only be Commander-in-Chief of the militia after it is mustered into the actual service of the United States. The militia can only be called out as such.

The militia cannot be called forth as a regular army at all. They may be called as a militia. They cannot be trained and officered in any case except under the authority of the States, nor commanded even by the President except when called forth in the exigencies specified.

The militia, therefore, are not constitutionally subjected to the general and exclusive control of Congress.

The power granted to Congress to raise and support armies does not apply to the militia. This is a distinct and independent power, and has always been so considered.

The States were always insistent as to their rights over the militia, but in the case of *Martin* v. *Mott*, 12 Wheaton, 19, this Court finally determined that the President was Judge as to when the exigency had arisen to call out the militia.

This Draft Act does not purport to be passed for the purpose of calling forth the militia of the States; it denies the right of the States to appoint officers and ignores all State authority (Section Second of Draft Act). It gives to the President full and

arbitrary power to assign for, provide, present to military duty men in any corps, regiment or company he may see fit. It is manifest, therefore, that it is not founded upon and cannot be defended as being authorized by any clause in the Constitution relating to the militia.

Conscription is not intended to re-enforce the militia of the States but the army of the United States. By this law the President is authorized to conscript every male person between twenty-one and thirty years, inclusive (with few exceptions), and consolidate them into one immense United States army to be commanded by Federal officers.

If this law is constitutional, if every able-bodied man in the United States may be conscripted directly into the regular army of the United States for the purpose of fighting on soil outside of the United States and without the consent of the State authorities in what we call a war to make the world safe for democracy, they can also be compelled to do military duty in an aggressive war against a foreign nation. They can be compelled to go to any part of the world to fight. It places the lives and liberties of all at the disposal of Congress. Every soldier may be then compelled to become a soldier for life, or during a war, or during a period of peace, whenever Congress should deem fit to enact such a law. This extraordinary power, it is said, is given to Congress by the grant: "Congress shall have power to raise and support armies."

The power conferred on Congress was the power to raise armies by the ordinary English mode of voluntary enlistments.

The people were justly jealous of standing armies. Hence they took away most of the war power from the executive, where, under monarchical forms, it generally resides, and vested it in the legislative department, in one branch of which the

states have equal representation and the other branch of which the people of the States are directly represented according to their numbers. To these representatives of the States and the people this power of originating war was committed, but even in their hands it was restrained by the limitation of biennial appropriations for the support of the armies they might raise. Of course no army could be raised or supported which did not command popular approbation; and it was rightly considered that voluntary enlistments would never be wanting to recruit the ranks of such an army. The war power, existing only for the protection of the people, and left, as far as it was possible to leave it, in their own hands, was incapable of being used without their consent, and therefore could never languish for enlistments. They would be ready enough to recruit the ranks of any army they deemed necessary to their safety. Thus the theory of the Constitution placed this great power, like all their governmental powers, directly upon the consent of the governed. Equally unjust to their intelligence is it to suppose that they meant to confer on their servants the power to impress them into a war they could not approve.

There is nothing in the history of the Constitution nor in the debates upon it in the conventions, Federal and State, nor in those excellent contemporaneous papers known as the *Federalist*, to justify the suspicion that this vast and dangerous power lies wrapped up in the few plain words of the twelfth clause, but on the contrary, the most indubitable evidence is derivable from all those sources that the thought of subjecting State militia to Federal draft had no existence in the minds of that day. If such a construction had been anticipated, the objections which the Constitution encountered in the State conventions would doubtless have been found insurmountable.

But is this the only check?

Has Congress absolutely unlimited power to raise a regular Federal army by conscription at any time and for any period of time in any manner and for any purpose?

If so, Congress would have the power at any time to impress into military service in the regular army the entire male population capable of bearing arms. It could compel at any time a man to become a soldier in the regular army for life during a war, or for any other period. It could distribute the burden in the most unequal, oppressive, arbitrary and despotic manner, and still its acts would not be liable to the objection that they were not constitutional. Taxation was restricted, the ending of liberty for individuals or states was not. Is that even believable? Congress could raise an army in times of peace, as well as use it in a war of conquest waged against a foreign nation in a distant part of the globe. It could at any time take every man out of a State, no matter for what purpose and against the will of the State authorities, and employ the men so taken for the overthrow of their own State government legally and constitutionally elected. Did the people give that power?

What was the reason for the passage of this grant of power "to raise and support armies"? Congress has exclusive power to declare war and the States are prohibited from engaging in it unless in case of actual invasion or imminent danger thereof. The power to raise armies is an indispensable incident to the power to declare war.

The intention of the framers of the Constitution to be collected by the history and debates of the times seems to have been that the general Government should have power to raise and support a regular standing army which should be officered and trained exclusively by the United States and

kept ready for use at all times and be sufficient for ordinary emergencies which might suddenly arise. Outside of the Civil War, its regular army has never been raised or re-enforced otherwise than by voluntary enlistments. Its organization was based upon a contract between the party enlisting and the United States, to serve as a professional soldier or officer for a certain period of time in consideration of a certain stipulated sum or wages.

But the far-sighted framers of the Constitution did not stop here. They clearly saw that cases might arise in which the regular standing army, raised by contract, might be insufficient. They therefore further enacted that Congress should also have power to provide for calling out the militia in three exigencies, and to provide for organizing, arming and disciplining the militia and for governing such part of them as may be employed in the service of the United States under certain restrictions as I have before shown, and to pass all necessary laws to carry this power into effect.

It is a rule of law that the law will judge an instrument which consists of divers parts or clauses by looking at the whole and will give to each its proper office so as to ascertain and carry out the intention of the parties. In construing a part or clause of the Constitution, a whole act and all its parts are to be considered for the purpose of ascertaining and carrying into effect the intention of the framers thereof. The whole context must be considered in endeavoring to collect the intentions of the parties, although the immediate object of the inquiry be the meaning of an isolated clause.

Broom's Legal Maxims, pp. 253, 254, 6 Cranch., 307.

One of the reasons assigned for this rule is that the Constitution is the best expositor of itself, and

hence every part is to be taken into view for the purpose of discovering the mind of the framers, and that the details of one part may contain regulations restricting the extent of general expressions in another part of the same instrument.

Let us now compare the clause "To raise and support armies" with the clauses relating to the militia and see whether from the words or obvious intent of the latter we cannot find out the sense of the framers. The Constitution carefully distinguishes between the army of the United States and militia of the several States; that the President is only Commander-in-Chief over the militia when called into the actual service of the United States; that the militia can only be called out as such; but that Congress has full and unlimited power to call out the militia whenever three specific exigencies exist; to pass all necessary laws to make its call effectual, and to provide even for coercive measures to effect this purpose, with the exception that the States should at all times retain the right to appoint officers and that the President was the sole judge whether any exigencies exist.

Why give this power of calling the militia, with the restrictions attached to it but unfettered by any money limitation while the raising of an army is limited by money appropriations to two years, if the entire authority without any restrictions, not over the militia alone, but over every able-bodied man in the United States, had already been directly delegated to Congress? If this was so, the provisions relating to the militia are worse than useless. They would be mere surplusage and as such would only tend to perplex and bewilder. When the debates in the Federal Conventions upon this very subject are considered and which portray the extreme jealousy on the part of the people about delegating to the general Govern-

ment more military power than was strictly necessary, the framers of the Constitution should have been so extremely reluctant in granting a part of the power which a few moments before they had already granted in full and without limitation. These practical and far-sighted men did not insert two clauses into the Constitution with the intention that they should be mere surplusage, of no force whatever, and which might be disregarded at any time if in construing another clause of the Constitution conferring similar and more ample powers, they should become inconvenient. The framers of the Constitution intended that the Federal Government should have the power to raise and keep a regular standing army to be officered and trained exclusively by the United States and of sufficient size to be adequate for ordinary emergencies, which army should be raised and reinforced from time to time by voluntary enlistments, and that if extraordinary emergencies should arise which they specified, and the regular army should be insufficient for the exigencies, and it should be impossible to strengthen it sufficiently by the ordinary means, that then Congress shall have the power to call out the militia of the States liable to do military duty as an auxiliary force, and pass all necessary laws to make its call effectual, always, however, with the reservation that the State should have the right to appoint the officers. This is as far as I think those who made the Constitution intended to go, and the powers so conferred seem ample enough for any emergency which may arise.

Congress has power to provide and maintain a navy. This power appears to be as unlimited and as general in its terms as the power to raise and support armies, and is even more so because there is no money limitation attached to it. But has it ever been claimed, even in the Civil War, that the

general Government possesses the power to impress men into the naval service? Never. Yet the Constitution does not limit the navy with funds because the navy has never been a danger to the liberty of the people, while large standing armies always have been. Mr. Monroe, who is cited as in favor of conscription for the army, in his instructions to the commissioners at Ghent, proclaimed that: "Impressment is not an American practice, but is utterly repugnant to our Constitution and laws."

One of the amendments to the Constitution which was added for the purpose of further restricting the powers granted in the Constitution provides: "A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed." The right of the sovereign State to maintain "a well regulated militia" was universally understood by the framers of the Constitution to be clear and indisputable.

The Conscription Act places every able-bodied man at the disposition of the Federal Government and compels him to go out of the State of New York without the grant and assent of the people of the State of New York, and to serve in the regular army, thus instantly abolishing the entire State Militia, and annulling its organization, and the State of New York is even denied the right to appoint the officers for the drafted men. The actual militia has practically been dissolved by being included in the regular army, and losing its identity. It is no argument to say that the Federal Government will never be driven to the necessity to take all the able-bodied men out of the State, that therefore enough will be left to enable the State to exercise its sovereign right to maintain a well-regulated militia. The question is, has Congress the power to pass a law compelling any man to leave a State at any time

and for any length of time and for any purpose without the consent of the State authorities? If it has, the Federal Government has the power under such law to take all the able-bodied men of a State and make soldiers of them for life to be used for any purpose, thus abolishing the entire State Militia and wiping it out of existence. What other resources for maintaining a well regulated militia besides its able-bodied citizens can a State have? None. Can it be contended that Congress has power to nullify a sovereign right of a State by rendering the exercise of it impossible, thus doing indirectly what it cannot do directly? Why could it not take all the men in the State and leave only the women? Or why could it not take both and force them all to leave the State? If they have the power to take men between the ages of twenty-one to thirty inclusive, they have the power to take all. It would be the most despotic power ever possessed by any despot in history.

Washington is cited as being in favor of conscription. In the War of 1812 Judge Gaston of North Carolina, a strong Federalist, arose in Congress (1814) and denied that Washington favored conscription, and called that power unconstitutional. General Knox, then Secretary of War under Washington, presented a plan, as did other secretaries for his department, in reference to the militia, among other things, advanced the idea of conscription. This was transmitted to Congress by President Washington without any recommendation whatever. It also did not appear that this feature in that report had ever been brought to the notice of the President. Judge Gaston closed his argument with the remark that: "Congress had no more power to raise armies by conscription than it had to provide and maintain a navy by force."

Mr. Monroe did, however, advocate the constitutionality of conscription in 1814. He was Secretary of War at the time. We were engaged in a war with England. *The Government had had hard work to raise money for the purpose of carrying on the war, and, because of it, harder work at times to raise the men*, and therefore the urgent necessities of the country had a great deal of influence over the mind of Mr. Monroe in forming this opinion. At any rate, the idea advanced by Mr. Monroe did not meet with favor and did not receive legislative sanction and was dropped.

Chief Justice Daggett of Connecticut, a jurist of rare ability, arose in the Senate of the United States in November, 1814, and denounced Mr. Monroe's idea of conscription as unconstitutional. A similar speech was delivered in the Senate of the United States in November, 1814, by Jeremiah Mason of New Hampshire, also known as an eminent jurist.

Daniel Webster argued against the proposed conscription during the war of 1812. He delivered his argument on the 8th day of December, 1814. The greatest constitutional lawyer that ever sat in the United States Senate, his arguments are skilled, and carries as much weight and convinces the mind against the Draft Law to-day as it did at that time against a proposed Draft Law. He said:

> "The services of the men to be raised under this act are not limited to those cases in which alone this government is entitled to the aid of the militia of the States. These cases are particularly stated in the Constitution—'to repel invasion, suppress insurrection, or execute the laws.' But this bill has no limitation in this respect.
>
> This, then, Sir, is a bill for calling out the militia not according to its existing organization, but by draft from new created

classes—not merely for the purpose of repelling invasion, suppressing insurrection, or executing the laws, but for the general objects of war.

What is this, Sir, but raising a standing army out of the militia by draft, and to be recruited by draft, in like manner, as often as occasions require? * * * Persons thus taken by force and put into an army may be compelled to serve there, during the war, or for life. They may be put on any service, at home or abroad, for defense or for invasion, according to the will and pleasure of the government.

Is this, Sir, consistent with the character of a free government? Is this civil liberty? Is this the real character of our Constitution? No, Sir, indeed it is not. The Constitution is libelled, foully libelled. The people of this country have not established for themselves such a fabric of despotism. They have not purchased at a vast expense of their own treasures and their own blood a Magna Charta to be slaves.

Where is it written in the Constitution, in what article or section is it contained that you may take children from their parents and parents from their children and compel them to fight the battles of any war which the folly or the wickedness of government may engage in? Under what concealment has this power lain hidden which now for the first time comes forth, with a tremendous and baleful aspect, to trample down and destroy the dearest rights of personal liberty? Who will show me any constitutional injunction which makes it the duty of the American people to surrender everything valuable in life, and even life itself, not when the safety of their country and its liberties may demand the sacrifice, but whenever the purposes of an ambitious and mischievous government may require it?

Sir, I almost disdain to go to quotations and references to prove that such an abom-

inable doctrine has no foundation in the Constitution of the country. It is enough to know that that instrument was intended as the basis of a free government, and that the power contended for is incompatible with any notion of personal liberty. An attempt to maintain this doctrine upon the provisions of the Constitution is an exercise of perverse ingenuity to extract slavery from the substance of a free government. It is an attempt to show, by proof and argument, that we ourselves are subjects of despotism and that we have a right to chains and bondage, firmly secured to us and our children by the provisions of our government. * * * A free Constitution or government is to be construed upon free principles, and every branch of its provisions is to receive such an interpretation as is full of its general spirit. No means are to be taken by implication, which would strike us absurdly if expressed. And what would have been more absurd, than for this Constitution to have said, that to secure the great blessings of liberty it gave to government an uncontrolled power of military conscription? Yet such is the absurdity which it is made to exhibit under the commentary of the Secretary of War.

A compulsory loan is not to be compared, in point of enormity, with a compulsory military service.

If the Secretary of War has proved the right of Congress to enact a law enforcing a draft of men out of the militia into the regular army, he will at any time be able to prove quite as clearly that Congress has power to create a Dictator. The arguments which have helped him in one case, will equally help him in the other. The same reason of a supposed or possible state necessity which is urged now, may be repeated then with equal pertinency and effect.

Sir, in granting Congress the power to raise armies, the people have granted all the

> means which are ordinary and usual, and which are consistent with the liberties and security of the people themselves, and they have granted no others. To talk about the unlimited power of the government over the means to execute its authority, is to hold a language which is true only in regard to despotisms. * * * A free government, with arbitrary means to administer it, is a contradiction; a free government, without adequate provisions for personal security, is an absurdity; a free government with an uncontrolled power of military conscription is a solecism, at once the most ridiculous and abominable that ever entered into the head of man."

It is true press-gangs existed in England as long ago as 1756, but no conscription for a regular standing army existed in England at the time of the Revolutionary War. England hired the Hessians to fight when she wanted more soldiers; she did not conscript her people to cross the ocean. Conscription was not debated in the Constitutional Convention nor by the people at the time of the adopting of the Constitution. Conscription in modern times commenced in 1793, when the first conscription act was passed by the French Chamber.

See *Blackstone Commentaries on Military Service,* and it will be seen that up to 1780, the time of his death, there was no military conscription in England. The only method known at that time to raise a regular army was by voluntary enlistment, and in the United States by requisitions upon the States.

The Constitutional Convention did all in its power to incorporate into our Federal Constitution the English military system, which in 1787 consisted, first, of a regular or "non-constitutional force" made up of a standing army and navy; sec-

ond, of an emergency or "constitutional force" called the militia, a force for national defense that had existed for a thousand years. In the words of the *Ency. Brit.* (9th Ed.):

> "The militia of the United Kingdom consists of a number of officers and men maintained for the purpose of augmenting the military strength of the country in case of imminent national danger or great emergency. In such a contingency the whole or any part of the militia is liable, by proclamation of the sovereign, to be embodied, that is to say, placed in active service within the confines of the United Kingdom."

The county military system, known as the militia, survived the Norman Conquest unimpaired. *Stubbs, Select Charters*, pp. 153-154. By the Great Statute of 1 Edw., Edw. III, c. 5, it was provided that the militia should only be used at home for national defense, "as has been used in times past for the defense of the realm." In 1786, the year before the Federal Convention met, was passed the statute of 26 Geo. III, c. 107, Sec. 95, concerning the militia, in which it was specially provided that "neither the whole nor any part shall be ordered out of Great Britain." Mr. Dicey, one of the most eminent of modern English commentators, says:

> "The militia is the constitutional force existing under the law of the land for the defense of the country. * * * Embodiment indeed converts the militia for the time being into a regular army, though an army which cannot be required to serve abroad" (*The Law of the Constitution*, pp. 287-288).

England never had a military force that could be sent abroad until William the Conqueror brought such a force with him in the feudal host of professional soldiers who accompanied him. It

was the duty of that host, which simply supplemented the ancient constitutional force known as the militia, "to attend the King in war, within and without the realm, mounted and armed, during the regular term of service." But as that regular term of service only lasted for forty days, it led to the device of shield-money, which produced a fund with which the Crown could employ mercenary and professional soldiers who could be kept abroad so long as needed. Out of that purely voluntary system of paid military service was evolved the standing army of England as it existed at the date of the American Revolution; and upon the same general basis rested the standing and professional naval force of England at that time. In order to enable this republic to maintain a standing army and navy like that of England, the Convention of 1787, after giving to Congress the power "to declare war," provided that

> "The Congress shall have power * * * To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years; To provide and maintain a navy; To make rules for the government and regulation of the land and naval forces."

Those three provisions, grouped together as a connected whole, relate solely and exclusively to one subject-matter—the creation, maintenance and government of the regular army and navy of the United States, which has always been maintained "by voluntary enlistment."

It is simply impossible to confuse "the regular army" of the United States with that force called by the Supreme Court "the reserved military force or reserved militia of the United States."

Presser v. *Illinois*, 116 U. S., 252.

The militia is a force for national defense that can never be "taken out of the realm" for service in a foreign country. In that sense the term "militia," four times repeated, was embodied in our Federal Constitution.

Ex parte Wells, 18 How., at page 311, stating the rule for deciding the meaning of a word, said:

> "We must then give the word the same meaning as prevailed here and in England at the time it found a place in the constitution. This is in conformity with the principles laid down by this court in *Cathcart* v. *Robinson,* 5 Pet., 264, 280; and in *Flavel's* case, 8 Watts & Sargent, 197."

And in order to put it forever beyond the power of Congress to impair the ancient constitutional exemption from service abroad, the Convention, employing the masterful pen of Gouverneur Morris, provided that the new government, with strictly limited powers, could only organize the national militia for three purposes: "to execute the laws of the Union, suppress insurrections and repel invasions." By those limitations all other uses were expressly excluded with all the force the language can impart. The moment the exemption of the militia from service abroad was thus embodied in the Constitution, Congress was forever deprived of all power over the subject. All military laws up to the present time, except the acts in question, always made the distinction between the regular army and the militia, and this long-continued action of the executive and legislature is some proof as to the proper distinction to be made, and that the services to be rendered by the militia can be required only upon the soil of the United States or of its territories, nor can they be used to enforce public rights abroad.

See also opinion of Attorney-General Wickersham, Opinion A. G., Vol. 29, p. 322, Feb. 17, 1917, and the opinion of Judge Advocate General Crowder rendered to the Secretary of War Dec. 29, 1911.

There is nothing in the Constitution to prevent us from waging the war successfully; the Constitution provides how it is to be done—the regular army and the volunteers to go abroad, the militia to "execute the laws of the Union, suppress insurrections and repel invasions." And the reason it specifically provides with its check and balance how it is to be done is so that no army shall ever be used as an instrument for the establishment of a despotism, the end of every republic in history. The method provided for is sufficient for the common defense.

C 1. The Draft Act Destroys State Governments.

Subdivision Seventh, Section 6, of the Draft Act reads as follows:

> "That the President is hereby authorized to utilize the service of any or all departments and any or all officers or agents of the United States and of the several States, Territories, and the District of Columbia, and subdivisions thereof, in the execution of this Act, and all officers and agents of the United States and of the several States, Territories, and subdivisions thereof, and of the District of Columbia, and all persons designated or appointed under regulations prescribed by the President whether such appointments are made by the President himself or by the governor or other officer of any State or Territory to perform any duty in the execution of this Act, are hereby required to perform such duty as the President shall order or direct, and all such officers and agents and persons so designated or ap-

> pointed shall hereby have full authority for all acts done by them in the execution of this Act by the direction of the President. Correspondence in the execution of this Act may be carried in penalty envelopes bearing the frank of the War Department. Any person charged as herein provided with the duty of carrying into effect any of the provisions of this Act or the regulations made or directions given thereunder who shall fail or neglect to perform such duty; * * * shall, if not subject to military law, be guilty of a misdemeanor, and upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than one year * * *."

This section conscripts state officials, and places them under the military command of the President. It destroys state sovereignties. It makes Governors and state officials direct subordinates of the President, with criminal punishment for disobedience, and in some instances subject to court-martial.

In *Texas* v. *White*, 7 Wall., at page 725, this Court said:

> "The perpetuity and indissolubility of the Union, by no means implies the loss of distinct and individual existence, or of the right of self-government by the States. Under the Constitution, though the powers of the States were much restricted, still, all powers not delegated to the United States, nor prohibited to the States, are reserved to the States respectively, or to the people. * * *. The preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National Government. The Constitution, in all its provisions, looks

> to an indestructible Union, composed of indestructible States."

The fear of the destruction of the State Governments was ever present in the Constitutional Convention, and the framers of the Constitution believed that they had provided sufficient safeguards to prevent the destruction of the State Governments.

In *Texas* v. *White, supra*, this Court further said:

> "The Court is bound to know and notice the public history of the nation."

War does not change the status of the State.

In *Ex parte Milligan*, 4 Wall., 118, this Court said:

> "The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times and under all circumstances."

The alarms as to the end of liberty of State and individuals, were many, at the time of the adoption of the Constitution, now for the first time they are being realized. Section 6 really places the President, as Commander-in-Chief, above the civil authorities in every part of the Union. It makes all State officials subordinate to him, and makes the President's orders and regulations take precedence over all State laws, and makes the duty of obeying them have priority over the duties of all State officials, including the Governer of the State.

Attorney-General Wickersham (Opinions, A. G., Vol. 29, p. 322), Feb. 17, 1912, stated that:

> "Under our Constitution the military is subordinate and subservient to the civil power."

Republican form of State Government ceases, despite Article IV, Subdivision 4 of the Constitution which reads:

> "The United States shall guarantee to every state in this Union a republican form of government. * * *"

One of the complaints in the Declaration of Independence was:

> "He has affected to render the military independent of and superior to the civil power."

2 *Elliot's Debates*, 359, Governor Clinton:

> "I declare solemnly that I am a friend to a strong and sufficient Government. But, sir, we may err in this extreme; we may erect a system that will destroy the liberties of the people. * * * The people when wearied with their distresses will in the moment of frenzy be guilty of the most imprudent and desperate measures. Because a strong Government was wanted during the late war does it follow that we should now be obliged to accept a dangerous one? I ever lament the feebleness of the Confederation for this reason and no others that the experience of its weakness would one day drive the people into an adoption of a Constitution dangerous to our liberties. I know the people are too apt to vibrate from one extreme to another."

In 2 *Elliot's Debates*, 355, Hamilton said:

> "The States can never lose their powers till the whole people of America are robbed of their liberties. They must go together; they must support each other or meet one common fate. On the gentleman's principle we may safely trust the State Governments, though we have no means of resisting them; but we cannot confide in the National Government, though we have an effectual Constitutional guard against every encroachment. * * *
>
> I imagine I have stated to the committee abundant reasons to prove the entire safety of the State Governments and of the people. I would go into a more minute consideration of the nature of the concurrent jurisdiction and the operation of the laws in relation to revenue, but at present I feel too much undisposed to proceed. * * * I wish the committee to remember that the Constitution under examination is framed upon truly republican principles; and that as it is expressly designed to provide for the common protection and the general welfare of the United States, it must be utterly repugnant to this Constitution to subvert the State Governments or oppress the people."

Where power is delegated exclusively to the United States which requires executive aid to carry the same out, such powers must be executed by the officers of the United States, the Constitution having created that government for that purpose alone, and the same cannot be delegated to State officers, nor can State officers be compelled to carry out the orders.

In our dual form of government there is a division of the powers of government, while the sovereignty which delegates these powers resides in the people.

The Government of the United States is as completely foreign to the State governments as is that of any foreign country, and has no more power in the States and over its officers than any such foreign government. The Draft Act violates this well established rule, and if permitted to stand would lead to endless chaos, conflicts, and to a complete destruction of our constitutional form of government.

It is beyond the powers of both of these governments to interfere with the officers and agents of the other governments when acting within their allotted sphere. That is to say, the State of New York has no power or authority to control the officers of the United States within the limits of their power, or to impose upon them State duties. Nor can the Government of the United States, in the exercise of its constitutional power, delegate to or impose upon State officers the execution of the trusts and duties which by the Constitution are expressly delegated to and imposed upon the Government of the United States and its officers. Therefore, the provisions of the said Act, in attempting to do so, is violative of the Constitution of both the United States and of this State.

In brief, the President of the United States has no legal and constitutional powers to order and control the Governor and officials of New York State, and inflict penalties, than the Governor of the State has to order the President or officials of the United States and inflict penalties upon the persons who do not obey.

State courts that passed on the Draft Law during the Civil War, held that it would be unconstitutional if the Draft Act wiped out State governments or attempted to draft state officials.

In *Jeffers* v. *Fair*, 33 Ga., 347, the Court, though holding the Draft Law constitutional in the Con-

federate States, specifically holds that the State militia cannot be used in an offensive war on foreign soil, and states further:

> "Nevertheless, if it be true that the exercise of this power as we construe it, would be subversive of the State Governments or might be made so then indeed, is it violative of the spirit of the Constitution."

In *Burroughs* v. *Peyton*, 57 Va., 470, the Court, though holding the Draft Law of the Confederate States constitutional, holds that Confederate Congress has no power to coerce officers of the State Government into the military service of the Confederate States.

This whole point seems almost too plain for argument.

In reference to these state decisions and the decisions of other state courts sustaining conscription in the Civil War, I can only quote what this Court said in *Ex parte Milligan*, 4 Wall., at page 109:

> "During the late wicked Rebellion, the temper of the times did not allow that calmness in deliberation and discussion so necessary to a correct conclusion of a purely judicial question. *Then*, considerations of safety were mingled with the exercise of power; and feelings and interests prevailed which are happily terminated."

C2. Draft Act Permits United States Government to Send State Militia (Including Drafted Men) to Europe.

The Conscription Law is unconstitutional because it permits the United States Government to send the National Guard and the drafted men beyond the borders of the United States.

This Court will take judicial notice of the proclamation of the President, that it is the intention of this Government to send to Europe the drafted men and the National Guard to fight Germany, and that the Draft Act mentions the "transportation (when peace is declared) of the forces then serving without the United States."

We inherited the rights of Englishmen. In the declaration drawn up by the Congress of the Nine Colonies assembled at New York, in October, 1765, among which was New York, it is stated: That the colonists "are entitled to all the inherent rights and liberties of his (the king's) natural born subjects within the Kingdom of Great Britain." (*Story on Const.*, Book I, Chap. XVII, Par. 138.)

One of the most important laws and best established principles of personal liberty in England, at the time of the American Revolution, was: That no Englishman could be sent out of the realm without his own consent. William Blackstone, discussing this great fundamental principle in his commentaries, Book I, Par. 137, said:

> "'No power on earth * * * can send any subject of England out of the land against his will; no, not even a criminal."

The words omitted from the quotation are: "except authority of Parliament," and I omitted them because in England the Parliament was and is omnipotent, not limited by any written Constitution. The King himself, even the most arbitrary Tudor, could not lawfully send an Englishman out of the country.

In *Robertson* v. *Baldwin*, 165 U. S., at page 296, Justice Harlan said:

> "The powers of the British Parliament furnish no test for the powers that may be exercised by the Congress of the United States."

When the thirteen Colonies were still part of England soldiers and sailors were voluntary hirelings. There was no conscription. Even during the long years of the Napoleonic Wars, lasting for nearly a quarter of a century, Great Britain never conscripted a single soldier. Wellington's victories were the work of volunteers. The French were driven out of Portugal and Spain by volunteers. The victors at Waterloo were volunteers. The conquerors of India, of the Soudan, of Egypt and of South Africa were volunteers. The first 4,000,000 Englishmen, Canadians and Australians who have saved France and England from the conscripted hands of Germany are gallant, patriotic volunteers.

Queen Elizabeth never conscripted a soldier or a sailor, although Spain's army threatened from Holland, and Spain's invincible Armada was sailing up the channel. During the long wars that England waged against the French King, Louis XIV, no law of conscription existed. Even when Napoleon massed his victorious legions at Boulogne, to invade England and the whole of Europe almost held its breath in suspense, England never lost her nerve and never forced a single man to the colors, but while the Parliament of Great Britain is not limited in its power by written terms, and can, therefore, legally resort to conscription, the Government of the United States is the creature of the people, is limited by a written Constitution, and has only the powers delegated to it by the people.

Wherever English subjects were, in land owned by England under the common law, they were subject to English law, and they were protected by it, it was their birthright.

1 *Bl. Comm.*, 107.
Rex v. *Vaughan*, 4 Burr. R., 2500.
Chitty on Prerog., Ch. 3, p. 29, etc.

The universal principle (and the practice has conformed to it) has been that the common law is our birthright and inheritance.

> *Story on Constitution*, 5th Ed., pp. 109, 110.

See also

> 4 *Jefferson's Corresp.*, 178.
> *Jefferson's Works*, VIII, 374.
> *Journal of Congress, Declaration of Rights of Colonies*, Oct. 14, 1774, pp. 27 to 31.
> 1 *Kent's Comm.*, 322.

In the war of 1812 it is well known that American militia refused to cross into Canada because they denied the right of the Government to take them out of their own country against their will. The members of the National Guard in the late Mexican trouble who refused to go voluntarily were not forced even to cross the line into Mexican territory. The construction placed on its power by the Executive Draft of the United States Government in the past is some argument as to what is the proper limit of its power.

(See also Opinion, Attorney-General Wickersham, *supra.*)

Stephen in his *Commentaries on the Laws of England*, 15th Ed., Vol. 2, Chapter 8, gives a history of the military establishments of England from the earliest days. At page 646, Vol. 2, Mr. Stephen sums up the matter thus:

> *"The militia, in whatever county raised, were liable to serve in any part of the United Kingdom, but not abroad, except in the case of men specially volunteered for the purpose.*

> During nearly the last hundred years of its existence the militia was raised by voluntary enlistment, and the compulsory levy by way of ballot remained suspended, at first under annual acts and afterwards under the militia (ballot suspension) act, 1865. What has been said above relates to the force known as the general or regular militia, but there are still on the statute books statutes which provide for the raising of what is known as the local militia, a force raised by ballot in each county and not liable to serve outside the county where raised."

The English idea of the militia is and always has been that it is a body primarily for home defense. It stood somewhere between a police force and the regular army and was expected to preserve the peace and protect the community when the police were not able to do so.

President Jefferson in his annual message December 3, 1805, said:

> "In the meantime you will consider whether it would not be expedient for a state of peace as well as of war so to organize or class the militia as would enable us on any sudden emergency to call for the services of the younger portions unencumbered with the old and those having families."

Writing in explanation of this portion of his message February 26, 1810, to General Kosciusko, Jefferson, referring to his plan to class the militia, said:

> "This would have given us a force of 300,000 young men prepared by proper training for service in any part of the United States, while those who would pass through that period would remain at home liable to be used in their own or adjacent States."

Writing to James Monroe, October 16, 1814, Jefferson said:

> "The objects of our contest being thus entirely changed by England we must prepare for interminable war. To this end we should put our house in order by providing men and money to indefinite extent. The former may be done by classing the militia and assigning each class to the description of duties for which it is fit. It is nonsense to talk of regulars. They are not to be had among a people so cozy and happy at home as ours. We might as well rely on calling down an army of angels from heaven."

If Jefferson had supposed that the power to draft for the regular army was given to the United States by the Constitution, he could never have used that language, for by the exercise of the power of the draft the regular army might at once have been filled to the desired amount, for any time desired.

In the *Slaughter House* case, 16 Wall., at page 115, Judge Bradley (in a dissenting opinion) said:

> "The people of this country brought with them to its shores the rights of Englishmen, the rights which had been wrested from English sovereigns at various periods of the nation's history. One of these fundamental rights was expressed in these words, found in Magna Charta: 'No freeman shall be taken or imprisoned, or be disseized of his freehold or liberties or free customs, *or be outlawed or exiled*, or any otherwise destroyed; nor will we pass upon him or condemn him but by lawful judgment of his peers or by the laws of the land.' English constitutional writers expound this article as rendering life, liberty and property inviolable, except by due process of law."

In the case of *Ex parte Coupland*, 26 Texas, 387, on an application for writ of *habeas corpus*, Judge Moore, though holding that the Confederate States could draft, in one part said:

> *"If they are militia they have no constitutional authority to march them beyond our own frontier, because the Constitution has limited the right of the government to demand their services for the purpose of repelling invasion."*

D. It violates Article I, Section 8, Subdivision 12, of the Constitution:

> **"To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years."**

Why cannot Congress raise one hundred billion dollars by bond issues, payable in thirty years, and use it to sustain a standing army for more than two years? And why could it not continue to do the same in peace time as well as in war time, and thus practically repeal this limitation on its power? The bond issues to support the army are payable in thirty years. No appropriation is made to support the army for a definite time. It was supposed under this clause of the Constitution that the people had practically a recall of the army every two years by electing a new House of Representatives, who only can originate money bills (Art. I, Sec. 7).

Standing armies may prove dangerous to the State, and therefore the Constitution intended to keep the power within the hands of the people by providing that "no appropriation of money to that use shall be for a longer term than two years." Thus, unless the necessary supplies are voted by the representatives of the people every two years, the whole establishment must fall. Congress may, indeed, by an act, disband a standing army at any

time, or vote the supplies only for one year, or for a shorter period, and the army would be automatically disbanded. For, as Napoleon said, "Armies travel on their bellies," and money is needed to supply it. The Constitution is imperative that no appropriation shall prospectively reach beyond the biennial period. It was believed that every human security against the possible abuse of that power was guarded against.

No power of the National Government was at the time of its adoption more strongly assailed by appeals to popular prejudices than that of standing armies. The *Federalist* gave it a most elaborate discussion, as one of the critical points of the Constitution (*The Federalist*, 24 to 29). Up to the present time Congress has restrained its appropriations within constitutional limitations.

In 2 *Elliot's Debates*, page 98, Mr. Dawes says:

> "The army must expire of itself in two years after it shall be raised unless renewed by representatives, who, at that time, will have just come fresh from the body of the people. It will share the same fate as that of a temporary law, which dies at the time mentioned in the act itself unless revived by some future legislation."

In *The Federalist*, XLI, Madison said:

> "Next to the effectual establishment of the Union, the best possible precaution against danger from standing armies is a limitation of the term for which revenue may be appropriated to their support. This precaution the constitution has prudently added."

The Federalist, XXIV (Hamilton):

> "The whole power of raising armies was lodged in the *legislature*, not in the executive; * * * an important qualification even

> of the legislative discretion, in that clause which forbids the appropriation of money for the support of an army for any longer period than two years. A precaution which, upon a nearer view of it, will appear to be a great and real security against military establishment without evident necessity."

Can Congress expand its own powers? Is the fact that we are at war a repeal of the checks and balances of the Constitution?

Can Congress, because it has the power "to raise and support armies," ignore the balance of the very clause which gives it that power? The clause reads:

> "To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years."

In *The Federalist*, XXVI, Hamilton said:

> "The legislature of the United States will be *obliged*, by this provision, once at least in every two years, to deliberate upon the propriety of keeping a military force on foot; to come to a new resolution on the point; and to declare their sense of the matter, by a formal vote in the face of their constituents. They are not *at liberty* to vest in the executive department, permanent funds for the support of an army, if they were even incautious enough to be willing to repose in it so improper a confidence." (The emphasis is Hamilton's.)

Standing armies have always been held fatal to public rights and political freedom. The right to raise standing armies was bitterly fought, but the limiting of the power by making necessary biennial appropriations removed the opposition. (The *Federalist*, Nos. 24, 25.) The reason being that at the biennial election different representatives could

be elected if the people were dissatisfied with the size of the standing army, and the new Congress could reduce the number. But give the executive unlimited funds, to cover an indefinite time, and even a new Congress cannot reduce the army, and the danger of large standing armies will be upon us, when the Constitution provided definitely against that danger.

E. **It violates Article 4, Section 2, Subdivision I of the United States Constitution:**

> **"The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."**

It violates Article 5 of the Amendments of the United States Constitution:

> **"No person shall * * * be deprived of life, liberty or property without due process of law."**

This act imposes or permits military, agricultural and industrial service of male citizens, with certain exceptions, thereby excluding the excepted classes and older and younger males than those included between twenty-one and thirty years, inclusive.

The history of civilized man is the history of the insistent conflict between liberty and authority. Each victory for liberty marked a new step in the world's progress; so that we can measure the advance of civilization by the amount of freedom acquired by human institutions. The first great struggle for liberty was in the realm of thought. But the authoritarians protested that freedom of thought would be dangerous; that a few were divinely appointed to think for the people. The power of church and state were arrayed against

the libertarians; but after the sacrifice of many great men and many great women, freedom in thought was won. The second momentous contest was for the liberty to speak. The third contest was for liberty of the press. The state said free speech and free press were dangerous. It was not the duty of citizens to think and speak, but to obey. It was perilous to permit people to speak their minds—they might speak the truth. The fourth struggle was for liberty of assembly. The fifth important contest for liberty was in the field of religion. In these five important spheres of human action there have been against a sea of ignorance and tradition five great victories for freedom. Liberty wherever applied has proved a benefit to humanity; furthermore, the most important steps in human progress would have been impossible without it; and if civilization is to advance, that advance can come only as a result of broader and more complete freedom in all human relations. A principle that has proved its workability in five such important and vital phases of social evolution should prove desirable in all the affairs of man. Even if it should be said that the Government in this case has the legal right, we would reply that at one time men had the legal right to enslave black men, to burn witches and heretics, and to enslave the conquered warriors of an enemy nation. There is no sentiment in legal right; it is the offspring of power only—"Might is right."

Conscription is founded on power, on might; volunteering on justice and freedom. One appeals to the sword and the jail to settle the matter; the other appeals to the conscience, the ideals and judgment of men.

This conscription law is based on a custom of the ages, but justice is a stranger to it.

Volunteering does its own enforcing, conscription needs enforcing.

In the *Slaughter House* cases, 16 Wall., at page 115, in his dissenting opinion, Judge Bradley said:

> "The Declaration of Independence, which was the first political act of the American people in their independent sovereign capacity, lays the foundation of our National existence upon this broad proposition: 'That all men are created equal; that they are endowed by their creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness.' * * *
>
> For the preservation, exercise and enjoyment of these rights the individual citizen, as a necessity, must be left free to adopt such calling, profession, or trade as may seem to him most conducive to that end. Without this right he cannot be a freeman. This right to choose one's calling is an essential part of that liberty which it is the object of government to protect; * * *."

Congress has no constitutional power to impose duties on citizens which shall vary according to their age, their health, or their belonging to a well recognized religious sect or organization, as that is not making laws operate on all alike, and under our Government that would not be due process of law.

Our conception of due process of law is that defined by the Chief Justice in *Caldwell* v. *Texas*, 137 U. S., 692, 697:

> "Due process of law is so secured by laws operating on all alike and not subjecting the individual to the arbitrary exercises of the powers of government, unrestrained by the established principles of private right and distributive justice."

We do not desire to embarrass the Government in the emergency that now exists; we believe, how-

ever, that the best interest of our Government and of humanity is that liberty shall not cease to live in our midst by establishing conscription.

But irrespective of the constitutional limitations; if Congress has the power to draft, it would necessarily imply that all drafting should be equal, impartial and uniform as to all similarly situated. This principle inheres in the very nature of the Constitution.

When the Constitution was adopted, the people expressed their apprehension that powers not intended to be conferred might be claimed and exercised by the Federal Government. Hamilton argued in the *Federalist* that adequate precautions had been inserted, and that the door had been closed to partiality and oppression; but the people insisted on further specific restrictions upon Congress, and to that end ten amendments were proposed at the first session of the First Congress in March, 1789. The Fifth Amendment, thus adopted, was to restrict the powers of Congress. We contend that this law deprives a man of his liberty and his property, for a man's labor has been held as property, and the draft may deprive him of his life.

The Draft Law denies to all those between twenty-one to thirty years, inclusive, the privileges and immunities given to certain individuals who belong to certain "well recognized religious sect or organization," etc., to exemption.

The purpose of the Fourteenth Amendment was to prevent the States from doing what the United States had been prevented by Article V of the Amendments. No State nor the United States can confiscate corporate or individual property, nor can it regulate it without allowing for a reasonable profit, and yet it is contended that the National Government can confiscate human life, force it to do what it wants, and face death if so ordered.

That an act of Congress permits it or orders it, does not constitute "due process of law," for if it was, then Congress could pass any statute to take private property without compensation, or do anything else merely by passing a law (see Judge Cooley, *Const. Limitations,* Chap. XI, commencing page 432, and citations given).

The mere fact that we are at war does not increase the power of Congress or the National Government, though it may use powers not ordinarily used, like calling for the militia when an invasion is taking place. One of our proud boasts has been that "We are a government of laws, not men."

Men seeking absolute power and assuming to exercise that power because they themselves declare war, must not be allowed, or we will cease to be a government of laws, and becomes a government by men, to whose whim and wish there is no restraint.

The draft is not for the term of the war, but for any time within four months after the President by a public proclamation announces the conclusion of peace. If Congress has the power to say four months, why has it not the power to say four years after a proclamation by the President?

The Draft Law is unconstitutional because it violates the right of an individual to a conscience.

Civil society may be considered as having its foundation in a voluntary consent, social contract, but there are certain rights which the individual does not give up by belonging to society; they arise from the law of nature and are incapable of being transferred or surrendered.

The Declaration of Independence says men

> "are endowed * * * with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted

> among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and institute new government, laying its foundation on such principles, and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness."

Mill on *Liberty* in the introduction said:

> "This, then, is the appropriate region of human liberty. It comprises, first, the inward domain of consciousness; demanding liberty of conscience in the most comprehensive sense; liberty of thought and feeling * * *. Secondly, the principle requires liberty of tastes and pursuits; of framing the plan of our life to suit our character; of doing as we like, subject to such consequences as may follow, without impediment from our fellow-creatures, so long as what we do does not harm them, even though they should think our conduct foolish, perverse or wrong. * * *
>
> No society in which these liberties are not, on the whole, respected, is free, whatever may be its form of government; and none is completely free in which they do not exist absolute and unqualified."

The liberties of the people might in many respects be invaded without the people fearing or being alarmed, but when free speech and free press, and the right peaceably to assemble and petition the Government for the repeal of the Draft Law, and control of one's body and conscience is invaded, then the time has come to seek relief. Under the Constitution this Court was established, with life tenure Judges, for the granting of relief from invasions of liberty. May we not anticipate further evils if this Draft Law is sustained, and judge those

future evils by the badness of the principle that the Government is absolute controller of the body and the conscience of all its citizens? Can we not see the approach of absolute tyranny already?

Story on the Const., Section 301, said:

> "Among the defects (of the Constitution) which were enumerated, none attracted more attention, or were urged with more zeal, than the want of a distinct bill of rights which would recognize the fundamental principles of a free republican government, and the right of the people to the enjoyment of life, liberty, property and the pursuit of happiness. It was contended that it was indispensable * * * that the people should have the right to bear arms; that persons conscientiously scrupulous should not be compelled to bear arms * * * that soldiers should not be enlisted, except for a short, limited term. * * *"

Section 303:

> "Many of these objections found their way into the Amendments. * * *"

What is the measure of the rights and duties of government and people?

Are we the absolute slaves of government, as men were once of some church?

How far can the State compel an individual?

How far can it invade his conscience?

Madison in *The Federalist*, XLV, denounced "The impious doctrine in the old world, that the people were made for kings, not kings for the people," and then asks, "Is the same doctrine to be revived in the new, in another shape, that the solid happiness of the people is to be sacrificed to the views of political institutions of another form?"

Blackstone in his Commentaries said:

> "No laws are binding on the human subject which assault the body or violate the conscience. The right of personal security consists in a person's legal and uninterrupted enjoyment of his life, his limbs and his reputation."

The Federalist, LI, Hamilton:

> "Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels no government would be necessary. If angels were to govern men neither external nor internal controls on government would be necessary."

From the days of the Pharoahs, through Persia and Greece and Rome down to the Reformation, Church and State had absolute right over body and conscience. The Reformation ended the control of the Church. The establishing of this government ended the Divine Right of Kings over the body and conscience of the people. Did we fail and merely substitute a Federal Government for a King with as absolute a right over body and conscience as ever claimed by King or Church? Have we made no advance in the principles of liberty and freedom by the establishment of this government; did we merely change masters?

The whole compass of science was in the Middle Ages subject to restraint; every new opinion was looked upon as dangerous. To affirm the globe we inhabit to be round was deemed heresy, and for asserting its motion the immortal Galileo was con-

fined in the prisons of the Inquisition. In proportion as the world has become more enlightened, this unnatural policy of restraint has retired; the sciences it has entirely abandoned and has taken its last stand on religion and politics.

In *Yick Woo* v. *Hopkins,* 118 U. S., 356, this Court said:

> "For, the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself."

Cooley Const. Limitations, p. 676:

> "Whatever deference the Constitution or the laws may require to be paid in some cases to the conscientious scruples or religious convictions of the majority, the general policy always is, to avoid with care any compulsion which infringes on the religious scruples of any, however little reason may seem to others to underlie them. Even in the important matters of bearing arms for the public defense, those who cannot in conscience take part are excused, and their proportion of this great and sometimes imperative burden is borne by the rest of the community."

There are constitutional provisions recognizing conscientious objectors to bearing arms in more than a dozen States.

Richard Henry Lee, one of the delegates in Congress from the State of Virginia, to Edmund Randolph, Governor of said State, said:

> "But what is the power given to this ill constructed body (Senate)? To judge of

> what may be for the general welfare; and such judgments, when made the acts of Congress become the Supreme laws of the land. This seems a power co-extensive with every possible object of human legislation. Yet, there is no restraint; any form of a bill of rights, to secure (what Dr. Blackstone calls) that residuum of human rights which is not intended to be given up to society, and which, indeed, is not necessary to be given for any social purpose. The rights of conscience, the freedom of the press, and the trial by jury, are at mercy" (1 *Elliot's Debates*, 503).

This "residuum of human rights" was intended to be provided by the first Ten Amendments.

We in America deny the statement of Benhardi that "Might makes right." That is the doctrine of the Kings and despotisms of old. It was the doctrine in ancient Egypt and Persia; the doctrine of Caesar and the Roman Empire, Tamerlane and Attila; the Spanish Conquerors of Mexico, Central America and South America and at the worst it was the doctrine of the Czar of Russia.

I know that all society tends to the subordination of the individual to the mass, but the question, fundamentally, is that the best even for the mass? It certainly is not for the individual, it certainly is not for self-realization. Enforced democracy will not bear the fruits of liberty. The Draft Law takes our liberty and our democracy, and says that we are to make the world safe for democracy and that we will have our liberty and democracy returned four months after the war. But suppose the National Government claims the world crisis continues, that nations are continuing large war preparations, and that we must continue the draft as a standing national policy? What then? Who is to decide? If they can do it now un-

der the Constitution, they can do it in peace times. The public men and writers who shouted for conscription are now calling for universal military service, and preparation for war after the war.

The so-called "conscientious objector" to military service may be said to emerge, as a class, for the first time in history in England and in America during the present war. There may have been, it is true, in the past, Quakers and other sects of Christians who accepted literally the commandment, "Thou shalt not kill." But apart from the religious sects mentioned, the men who, from conscientious motives, refused to fight, have not figured, as a class at least, in military history; they were unknown in our Civil War. The conscientious objector is a new portent, and presents a new problem—and perhaps a new hope.

England has imprisoned conscientious objectors, to the number of some 4,000. What does America propose to do? What relief will this Court, as a Court of Justice, give to the conscientious objector?

The complexity and richness of life have permitted the more or less free play of all modes of energy. There are many men best adapted by training and temperament to the performance of physical acts of heroism; there are some men more naturally suited to the performance of intellectual deeds of courage, while yet some others shine in deeds of moral bravery. Why sanction in America the inhuman device of forcing all manner of men into the narrowly specific kind of devotion for which so many of them are hopelessly unfit? Tolerance arises from the existence of varying types of doers, all willing to respect one another's special competence.

Moreover, the one ineradicable fact which no amount of official intimidation can pulverize out of existence is that there is a type of man to whom

(military) participation in war is tantamount to committing murder. He cannot, he will not, commit murder. There is no human power on earth that can coerce him into committing (what he believes to be) the act of murder. You may call him sentimentalist, fool, slacker, mollycoddle—anything "disreputable" you please. But there he is a tremendous fact. Shall he be jailed for his scruples? Shall he be court-martialled or shall his conscientiousness be respected, and he be allowed to go his way in freedom and liberty? That is the question for this Court.

Sooner or later war must cease. The tremendous enterprise of recreating out of bloody chaos some new, reinspired internationalism will be the order of the day. So say all the leading statesmen of the world, including the President of the United States. It would be folly for a groping democracy to permit the degradation, the torture and the jailing of conscientious citizens who have that vision now.

Hasn't our evolving democracy any use for the student, the reflective man, the lonely thinker, the gentle philosopher, the socialist, the disciple of Jesus, the vision-haunted educator, the pity-racked lover of the human kind? Isn't sheer humanity itself a marvelous force for good even in time of war?

The history of the human race moves upward from the days of the absolute right of the head of the family to dispose of the balance of the family in any way whatsoever, even unto killing them, to the right of the chief, and the right of the clan, and the right to slaves by conquest and slaves by birth. Yet all the time the human race is moving upward to absolute freedom of the individual, as long as it does not interfere with another.

The idea that an individual may firmly believe that, though part of a community or a nation, he is also part of the human race, is a sun too bright

at present for most human eyes. Only the eagle in its freedom can look at the sun without blinking its eyes. Only true humans developed to the highest in freedom can bear "the sun of humanity."

The Reformation was a great uprising of the human spirit. It was a mighty response to the new knowledge then flowing in upon men's minds. It was a widening of horizons, a rending of veils, a liberating of the faculties of the soul of man. Whatever our faiths are, we instinctively admire the heroism and sincerity and faith of those who dared to challenge the mightiest power on earth in the name of truth, and to face all penalties with the words that it was right to obey God rather than man. It was a vindication of the majesty of the human conscience. Since then it has been easier for men to stand for what they believe in religion, in politics, in government. Conscientious objectors in numbers to all kinds of tryranny have developed only since the Reformation. Democracy assumes the supremacy of conscience. Our republic is a child of conscientious objectors.

If the conscientious objector (even though he does not belong to a well-recognized church or sect) believes absolutely in the command "Thou shalt not kill," to him there is no higher commanding power. If a man believes it immoral to kill, can Congress by declaring war suspend for this man the moral law as he recognizes it?

The Government may compel him to take his place in the line, but it cannot compel him to pull the trigger or thrust the bayonet. Such a recruit secured by compulsion is at the cost of democracy, and, according to military men, even at the cost of military efficiency.

All democracies, ours included, have tried to develop in its citizens the highest type of conscience, of appreciation of ones highest duty to oneself as

well as the State, and now this Government by this law tries to make them forget a century's teachings and beliefs. Not cowards are the conscientious objectors. It takes more courage to keep faith with conscience in the face of ridicule and scorn and the sneers of the unthinking, than it does to enlist or be conscripted.

If conscience does not count here in America, in what are we better than other tyrannies of history?

History can be, and often is, interpreted from a libertarian point of view. Lord Morley is quoted as saying that as he views human history from the earliest times until now, it appears to him a progress into a greater liberty. John Stuart Mill, in his classic "On Liberty," finds the key to history in the struggle between authoritarian and libertarian forces. Professor J. B. Bury, of Oxford University, published a wonderfully interesting and able book, "A History of Freedom of Thought," in which he developed the same idea.

One of the big sign-posts in the progress of humanity toward fuller freedom is, of course, the Reformation. The four hundredth anniversary of the Reformation was only recently celebrated. Human progress toward a fuller liberty did not stop with the Protestant Reformation, or with the American Revolution, or with the latest of all the revolutions—the Russian Revolution. It will go on forever. Greater liberties are ahead, especially in the civil realm.

To the period of civil liberty that will some day come to pass, it seems to me that pioneers of the type of the truly conscientious objector bear the same relation that pioneers of the type of Huss, Wyclif and Zwingli bore to the Protestant Reformation of the Middle Ages. Huss was burned at the stake, Zwingli was killed, thousands of heretics

were imprisoned and persecuted, yet, in the end, a greater freedom of conscience was won.

Dr. Nicholas Murray Butler, President of Columbia College, who is strongly pro-war, and probably in favor of conscription, in a special article in the *New York Times*, September 23rd, 1917, stated, however, a great truth when he said:

> "To recall to the mind of the twentieth century the significance of the great movement known as the Reformation is valuable public service. The modern mind is threatened, as was the mind of the sixteenth century, with the dominance of a philosophy of life and religion which operates to minimize the function and the freedom of the individual and to make each individual merely a cog in the wheel of a powerful and dominating group. The zeal and the individual's everlasting desire for expression and for responsibility, which were foreshadowed in European history by Saint Dominic and Saint Francis, as well as by Roger Bacon, and which later found such an epoch-making voice in Martin Luther, need to find expression to-day.
>
> The tyranny which threatens the twentieth century is not the tyranny of any church, but the tyranny of a majority in the State, a majority so constituted that it is not content with guiding the ordinary business of Government but which seeks to conform to a single and narrow type the occupation, the gains, the amusements and the modes of living of every individual. If the world needed a religious and philosophical reformation in the sixteenth century in order to emancipate the individual, surely it needs a social and political reformation in the twentieth century for the same purpose."

The very meaning of life, from the base of it to its summit—the something that is the distinguishing mark between the living and the not-living, is freedom or the power of choice between two or more alternatives. The tiniest particle of protoplasm that can just be called living and no more, floats about in water, and has the power of shooting out filaments and seizing any particles within reach that may be turned into nutrition. It has the power of choosing to take them or deciding to reject them, and this power of choice is what constitutes its livingness; without this power it would be dead. The power of choice or self-determination is, therefore, in the beginnings of things, what constitutes the difference between living and non-living matter—and it applies to human beings as well.

To wage war, in the old days of kings and dictators, everything was permissible, or if it was not permissible, the king or dictator had the power, and that ended all objections. Now the same power is claimed for our Government in this country. Have we not advanced since the days of despotism?

In the *Slaughter House* cases, 16 Wall., at page 127, Judge Swayne said:

> "Life is the gift of God, and the right to preserve it is the most sacred of the rights of man. Liberty is freedom from all such restraints but such as are *justly* imposed by law beyond that line lies the domain of usurpation and tyranny."

The forcing or jailing of conscientious objectors is a violation of individual liberty within its legitimate sphere.

POINT IV.

If Draft Law unconstitutional, there can be no conspiracy to violate it.

> "An unconstitutional law is void and is no law."
>
> *Ex parte Garborough,* 110 U. S., 651.

Therefore, if the Draft Act is unconstitutional, there could be no conspiracy to violate it and de-defendants' conviction improper.

CONCLUSION.

It is respectfully submitted that the decision of the Court below should be reversed, and the Draft Act declared unconstitutional.

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FILED

JAN 2 1918

JAMES D. MAHER,

Supreme Court of the United States

October Term, 1917

Emma Goodman and Alexander Berkman,
Plaintiffs in Error,

Appellant

vs. No. 708

The United States,
Defendant in Error.

SUPPLEMENTAL BRIEF.

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Harry Weinberger,
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1917.

EMMA GOLDMAN and ALEXANDER BERKMAN,
Plaintiffs-in-Error,
against
THE UNITED STATES,
Defendant-in-Error.
} 702.

Supplemental Brief on Behalf of the Plaintiffs-in-Error.

While the brief for the plaintiffs-in-error and the brief for the defendant-in-error fully covered the law with reference to the question of the unconstitutionality of the Selective Draft Law, neither brief considered in any way the effect of the Fourteenth Amendment to the Constitution, which makes citizens of the States citizens of the United States, and as to whether that Amendment conferred upon the National Government any enlarged powers and the right directly to conscript citizens of the United States.

POINT I.

Conscription is not authorized by the Fourteenth Amendment to the Constitution.

Article XIV, Section 1, reads as follows:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside. No States shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The purpose behind the adoption of the Fourteenth Amendment was the reversal of the results of the decision in the *Dred Scott* case. The first section of the Amendment, without making any direct reference to the question of race at all, contains a definition of citizenship of the United States.

In the case of *Re Kemmler,* 136 U. S., 436, 448, Chief Justice Fuller said:

> "The Fourteenth Amendment did not radically change the whole theory of the relations of the State and Federal governments to each other, and of both governments to the people. The same person may be at the same time a citizen of the United States and a citizen of a state."

In *Civil Rights Cases,* 109 U. S., at p. 10, Mr. Justice Bradley said:

> "The first section of the Fourteenth Amendment * * * after declaring who shall be citizens of the United States, and of the several states, is prohibitory in its character, and prohibitory upon the States. * * * It is State action of a particular character that is prohibited."

In *Strauder* v. *Virginia,* 100 U. S., 303, Justice Strong said:

> "This (the Fourteenth Amendment) is one of a series of constitutional provisions having a common purpose; namely, securing to a race recently emancipated, a race that through many generations had been held in slavery, all the civil rights that the superior race enjoy. The true spirit and meaning of the amendment, as we said in the *Slaughter House Cases* (16 Wall., 36), cannot be understood without keeping in view the history of the times when they were adopted, and the general objects they plainly sought to accomplish."

In *Ex parte Plessy,* 45 La. Ann., 80, the Court said:

> "That Amendment (the Fourteenth), it is well settled, created no new rights whatever, but only extended the operation of existing rights and furnished additional protection for such rights. *Barbier* v. *Connolly,* 113 U. S., 27; *U. S.* v. *Cruikshank,* 92 U. S., 542; *Slaughterhouse Cases,* 16 Wall., 36."
>
> See also, *Van Valkenburg* v. *Brown,* 43 Cal., at p. 47.

In *Story on the Constitution,* 5th Edition, treating of the Fourteenth Amendment, written by T. M. Cooley, Judge Cooley said:

> "Sec. 1943. The purpose of the statute was to give protection of the individual to the United States, not to increase its control.
>
> Sec. 1968. Such are the provisions of the Fourteenth amendment. Important as they unquestionably are, it is nevertheless to be observed that they have not been agreed upon for the purpose of enlarging the sphere of the powers of the general government, or of taking from the states any of those just powers of government which in the original adoption of the constitution were 'reserved to the States respectively.' The existing division of sovereignty, which had been found equal to the preservation of our liberties, not only in times of peace and general harmony but in the trial of a most desperate civil strife, is not disturbed by it. * * * The states, in adopting it, have not struck blindly and fatally at their reserved powers; they have rather given security that in certain important particulars they will not pervert or abuse them."

In a note Judge Cooley further says:

> "The government is not revolutionized by the new amendments to the constitution; it is but adapted to new conditions. The dangerous excresence of slavery has been cut off, and these are but to heal the wound."

The old idea of citizenship, to which justice and liberty were strangers, that a man is a slave of the State, was exploded in 1776, and finally disposed of by the establishment of our National Government. The right of the State to call upon citizens

to repel invasion, suppress insurrection and enforce the laws is our heritage as well as our duty. But even that was limited, as the early history of our colonies and states show, so as not to include "conscientious objectors." (This is more fully developed in my original brief, and *admitted* in the Government's brief.) Our history shows that it was intended in establishing the National Government that wars of aggression should not be fought, and limitations were placed upon the National Government in reference to calling out the militia and limiting appropriations to two years.

We are not weak in the power of self-defense, even if the Selective Draft Act is declared unconstitutional—we should be impotent in the power of aggression and conquest. Our armies have served in all parts of the world and overseas—but always as volunteers. If drafting was made constitutional by the Fourteenth Amendment, some future President, drunk with the desire for power or conquest, could by his own actions force a war, conscript the nation, and the people would be powerless until another election, which might be two or four years later.

Before the Fourteenth Amendment, President Lincoln attempted to justify the Civil War draft under the power to call forth the militia, to suppress insurrection, repel invasion, and enforce the laws of the United States. That Draft Act was never passed upon by this Court. The Government in its brief did not dare, however, to attempt to justify the present Selective Draft Act on the same grounds that President Lincoln attempted to.

Since the Draft Law of the Civil War, the Thirteenth Amendment to the Constitution, against involuntary servitude, has been passed, and, as quoted in the Government's brief, President Lin-

coln said: *"The principle of draft, which simply is involuntary or enforced service, is not new."* So that the Fourteenth Amendment, passed practically at the same period as the Thirteenth Amendment, cannot be even presumed to have repealed the other.

If the Fourteenth Amendment has not enlarged the powers of the National Government, the Selective Draft Law is unconstitutional upon the grounds fully set forth in my original brief.

Respectfully submitted,

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GOLDMAN ET AL. *v.* UNITED STATES.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 702. Argued December 13, 14, 1917.—Decided January 14, 1918.

The Selective Draft Law of May 18, 1917, *upheld* as constitutional, on the authority of the *Selective Draft Law Cases*, *ante*, 366, in a case of conspiracy to violate the act by dissuading persons from registering.

In reviewing directly a judgment of the District Court in a criminal case, when the constitutional questions upon which the jurisdiction of this court depends are not frivolous but are resolved against the plaintiff in error, other questions raised are to be considered and passed upon.

It is well settled that, under § 37 of the Criminal Code, a conspiracy to commit an offense, when followed by overt acts, is punishable as a substantive crime, whether the illegal end has been accomplished or not.

Upon a review of the whole record, the court finds that the objection that there was no evidence of guilt for the jury is absolutely devoid of merit, and based upon the false assumption that the power to review includes the right to invade the province of the jury by determining questions of credibility and weight of evidence.

Affirmed.

THE case is stated in the opinion.

Mr. Harry Weinberger for plaintiffs in error.

The Solicitor General, with whom *Mr. Robert Szold* was on the brief, for the United States. See *ante*, 368.

Mr. Hannis Taylor and *Mr. Joseph E. Black*, by leave of court, filed a brief as *amici curiæ*.

Mr. Walter Nelles, by leave of court, filed a brief as *amicus curiæ*.

MR. CHIEF JUSTICE WHITE delivered the opinion of the court.

Because of the constitutional questions involved the plaintiffs in error prosecute this direct writ of error to reverse a crimimal conviction and resulting sentence imposed upon them. The indictment upon which the conviction was had charged them with having, in violation of §§ 37 and 332 of the Criminal Code, unlawfully conspired together and with others unknown to induce persons, who by the Selective Draft Law of May 18, 1917, c. 15, 40 Stat. 76, were under the duty to register, to disobey the law by failing to register. Five specified overt acts were in the indictment charged to have to have been committed in furtherance of the alleged illegal conspiracy.

Seven grounds of error were assigned at the time of the allowance of the writ: 1. The refusal of the court at the request of the defendants to dismiss the indictment on the ground that the formation of a conspiracy to induce persons not to register as they were required under the law to do, and the performance of overt acts to carry out the conspiracy, constituted no offense. 2. The action of the court in refusing to grant a motion in arrest of judgment on the same ground. 3. The refusal to set aside the verdict because the facts proved did not constitute an offense against the United States. 4. The denial of a motion to dismiss the prosecution at the request of the defendants on the ground that the Selective Draft Law, upon which the alleged duty to register depended, was repugnant to the Constitution and void, there being numerous specifications on this subject involving a challenge of all power in Congress to have enacted the law, and, moreover (upon the assumption of some power,) an assertion of the repugnancy of the statute to the Constitution, resulting from various provisions which the act contained. 5. The de-

nial by the court of a motion made at the close of the case to dismiss the indictment on the ground that it stated no offense, as previously insisted, and upon the further ground that, in any event, there was no proof of the alleged conspiracy or the averred overt acts, or of any act adequate to show guilt. 6 and 7. The refusal of a motion to set aside the verdict and in arrest of judgment because the verdict was contrary to law and unsupported by evidence, upon grounds which had been previously urged and overruled.

Putting aside the multiplication which results from urging the same ground several times because when once made it was adhered to and reiterated at different stages of the trial, it is clear that the assignments embrace only three propositions: 1. The failure to dismiss the prosecution because of the repugnancy of the Selective Draft Law to the Constitution, for the reasons relied upon. 2. The refusal to dismiss because the indictment stated no offense. 3. The refusal to dismiss because there was no proof of conspiracy or of any overt acts adequate to have justified the submission of the case to the jury. Indeed in the elaborate argument at bar all the assignments of error are treated as embraced under the propositions thus stated and we therefore come to dispose of the case from such point of view.

1. The grounds here made the basis of the charge that the Selective Draft Law is repugnant to the Constitution are, so far as they concern the question of registration provided for by that law, identical with those which were urged in *Arver* v. *United States* [*Selective Draft Law Cases*], *ante*, 366, and were there adversely disposed of. The ruling in that case therefore also adversely disposes of all the relevant constitutional questions in this. The duty nevertheless remains to consider the other questions. *Brolan* v. *United States*, 236 U. S. 216, 217-218.

2. The contention that the indictment stated no of-

fense proceeds upon the assumption, reiterated in various forms of statement, that no crime results from an unlawful conspiracy to bring about an illegal act, joined with the doing of overt acts in furtherance of the conspiracy, unless the conspiracy has accomplished its unlawful purpose by causing the illegal act to be committed. This, however, but disregards the settled doctrine that an unlawful conspiracy under § 37 of the Criminal Code to bring about an illegal act and the doing of overt acts in furtherance of such conspiracy is in and of itself inherently and substantively a crime punishable as such irrespective of whether the result of the conspiracy has been to accomplish its illegal end. *United States* v. *Rabinowich*, 238 U. S. 78, 85, 86, and authorities there cited.

3. Sifting out of the arguments advanced to support the proposition that there was no evidence whatever tending to show guilt, contentions based upon the misconception as to the law of conspiracy which we have just adversely disposed of, and, moreover, contentions concerning an asserted misuse of discretion by the court below in ruling on an application to postpone the trial, which, as we have seen, were not even remotely referred to in the assignments of error, we think all the arguments rest upon the assumption that the power to review embraces the right to invade the province of the jury by determining questions of credibility and weight of evidence and from the residuum of evidence, resulting from indulging in and applying the results of such erroneous assumption, drawing the conclusion as to no evidence relied upon. While this statement suffices to dispose of the case without going further, we nevertheless say without recapitulating the evidence that after a review of the whole record we think the proposition that there was no evidence whatever of guilt to go to the jury is absolutely devoid of merit.

It follows that the judgment below must be and it is

Affirmed.